

**73. Every Sub-Registrar**

Procedure on Sub-  
Registrar's registration  
of document relating to immovable  
property situate in several Districts.

number of copies of the map or plan (if any) mentioned in section twenty-one as may be necessary, to the Registrar of every District in which any part of such property is situate other than the District in which his own Sub-District is situate.

The Registrar on receiving the same shall enter in his Book No. 1 the copy of the document and one of the copies of the map or plan (if any), and shall forward a copy of the document together with a copy of the map or plan (if any) to each of the Sub-Registrars subordinate to him within whose Sub-District any part of such property is situate; and every Sub-Registrar receiving such copies shall file the same in his Book No. 1.

**74. A will and an authority to adopt, presented for registration by the**

Registration of wills and authorities to adopt. testator or donor, may be registered in the same manner as any other document.

A will or authority to adopt presented for registration by any person entitled to present the same, other than the testator or donor, shall be registered if the Sub-Registrar is satisfied

- (1) that the will or authority was executed by the testator or donor, as the case may be,
- (2) that the testator or donor is dead, and
- (3) that the person presenting the will or authority is, under section forty-four, entitled to present the same.

**75. On receiving for deposit a sealed cover**

Procedure on de- under section forty-four, the Sub-Registrar, if satisfied that the depositor is the testator or donor, as the case may be, or his duly authorized agent, shall transcribe in his Register Book No. 3 the superscription on such sealed cover, and note in the register and on the sealed cover the year, month, day and hour of such presentation and receipt, together with the name of the depositor, and the name of each of the persons testifying to the identity of such depositor, and the inscription so far as it is legible on the seal of the cover.

The Sub-Registrar shall then send the cover to the Registrar to whom he is subordinate, and the Registrar shall, on receipt thereof, retain the sealed cover in his fire-proof box.

Nothing in this section or in section forty-six shall be deemed to affect the Saving of Act X of 1865, section 259.

provisions of the Indian Succession Act, section two hundred and fifty-nine, or the power of any Court by order to compel the production of any will for the purposes of granting probate or letters of administration with the will annexed. But whenever any such order is made, the Registrar shall copy the will in his Book No. 4 and make a note on such copy that the original has been removed into court in pursuance of the order aforesaid.

**(D.)—Special duties of Registrar.****76. On registering any instrument not testa-**

Procedure on regis- mentsary relating to immovable property under section tering instruments under section 32.

forward a copy of such instrument, together with a copy of the map or plan (if any) mentioned in section twenty-one, to each Sub-Registrar subordinate to himself in whose Sub-District any part of such property is situate.

He shall also forward a copy of such instrument, together with such number of copies of the map or plan if (any) mentioned in section twenty-one, as may be necessary, to any other Registrar in whose District any part of such property is situate.

Every Sub-Registrar and Registrar, on receiving any such copy or copies, shall follow the procedure prescribed for them, respectively, in section seventy-three.

**77. Every memorandum received under section**

Procedure on re- forty-one shall be copied in the receipt of memorandum margin of the part of the book under section forty-one in which the document affected by such memorandum is registered; and for this purpose the Registrar shall send a copy of such memorandum to every Sub-Registrar in his District in whose office the said document is registered, who shall copy such memorandum in the margin of the copy of the document registered in his office.

When any such memorandum relates to immoveable property situate in more Districts than one, the Registrar receiving the same shall also send a copy thereof to every other Registrar within whose District any part of such property is situate, who shall on receiving such copy follow the procedure prescribed for a Registrar in the first clause of this section.

**Every memorandum received by a Registrar**

Procedure on re- under section forty-two shall receipt of memorandum be filed by him in his Register under section 42. Book No. 5, and he shall then send a copy thereof to every Sub-Registrar subordinate to himself in whose Sub-District any part of such property is situate, and every such Sub-Registrar shall file it in his Register Book No. 5.

**(E.)—Of the Registrar General.**

**78. On any instrument being registered in** Procedure on regis- the general registry office registration in general under section thirty-one, a registry office. copy of such instrument and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose District any part of the property to which the instrument relates is situate.

The Registrar receiving such copy shall follow the procedure prescribed for him in section seventy-three.

**(F.)—Of the controlling powers of Registrars and Registrars General.**

**79. Every Sub-Registrar shall perform the** Registrar to super- duties of his office under intend and control the superintendence and con- Sub-Registrars. trol of the Registrar in whose District the office of such Sub-Registrar is situate.

Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him, or in respect

of the rectification of any error regarding the Book or the office in which any document shall have been registered.

**80. The Registrar General shall exercise a general superintendence over all the registry offices in the territories under the Local Government, and shall have power from time to time to frame rules consistent with this Act—**

Powers of Registrar General.  
Power to frame rules.  
providing for the safe custody of books, papers and documents, and also for the destruction of such books, papers and documents as need no longer be kept;

declaring the languages in which and the materials on, in and with which documents presented for registration are to be written or printed, the size of such documents and the extent of blank space to be left thereon;

declaring what territorial divisions shall be recognized under section twenty-one;

regulating the amount of penalties imposed under section twenty-four;

regulating the exercise of the discretion reposed in the registering officer by sections fifty-two and seventy-one;

declaring the particulars to be contained in Indexes Nos. I, II and III, respectively;

declaring the holidays that shall be observed in the registry offices;

and, generally, regulating the proceedings of the Registrars and Sub-Registrars under him.

The rules so framed shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official *Gazette*, and shall then have the same force as if they were inserted in this Act.

**81. No order shall be made to cancel the registration of any document under this Act, or under any Act hereby repealed.**

## PART XII.

### Of refusal to register.

**82. Every registering officer refusing to register a document,**

Reasons for refusal to register to be recorded by Registrar or Sub-Registrar, unless because he has a discretion to refuse to accept it for registration, or unless because the property to which it relates is not situate within his District or Sub-District,

shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and on application made by any person executing or claiming under the document, and on his furnishing a stamped paper of the value of eight annas, shall without unnecessary delay give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

**83. An appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory**

or optional) to the Registrar to whom such Sub-Registrar is subordinate if presented to such Registrar within thirty days from the date of the order, and the Registrar may reverse or alter such order:

Provided that, whenever the Registrar has himself as Sub-Registrar passed the order appealed against, the appeal shall lie to the Registrar General.

Any Registrar or Registrar General refusing to direct the registration of any document shall make an order of refusal and record the reasons for such order in his Book No. 2, and on application made by any person executing or claiming under the document, and on his furnishing a stamped paper of the value of eight annas, shall, without unnecessary delay, give him a copy of the reasons so recorded.

**84. If a Registrar or Registrar General makes**

Procedure where Registrar or Registrar General refuses to register or direct registration of documents falling under section 17 or section 18, clauses 1, 2, 3 and 4,

or if he has made a like order under section eighty-three of Act No. XX of 1866,

or if on appeal under section eighty-three he makes an order of refusal to direct the registration of such document,

any person claiming thereunder, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply by petition to the District Court, in order to establish his right to have the document registered.

**85. The petition shall be in the form contained in**

Petition. the second Schedule to this Act, or as near thereto as circumstances permit, and shall be accompanied by copies of the reasons recorded under sections eighty-two and eighty-three; and the statements in the petition shall be verified by the petitioner in manner required by law for the verification of plaints, and the petition may be amended by permission of the Court.

The document shall be admissible in evidence on Document admissible in evidence. the presentation and hearing of the petition, anything hereinbefore contained to the contrary notwithstanding.

**86. The Court shall fix a day for the hearing of**

Court to fix day for hearing petition, and copy thereof to be served. the petition not less than two days after the service next hereinafter mentioned, and shall direct a copy of the petition, with a notice at the foot thereof of the day so fixed, to

be served on the registering officer and on such other persons (if any) as the court thinks fit; and the provisions of the Code of Civil Procedure as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to copies of petitions under this section.

**87.** On the day so fixed as aforesaid, the Court may summon and enforce the attendance of witnesses and compel them to give evidence,

Court may order document to be registered.  
and if it finds that the document has been executed, and that the requirements of the law for the time being in force have been complied with on the part of the petitioner so as to entitle the document to registration, the court, unless satisfied that the order next hereinafter mentioned would work injustice, shall order such Registrar or Registrar General to register the document, or to direct its registration in the proper manner,

and he shall thereupon obey such order, and shall, so far as may be practicable, follow the procedure prescribed in sections sixty-six, sixty-seven and sixty-eight.

If the document be duly presented for registration within thirty days after the making of such order, the registration pursuant thereto shall take effect as if the document has been registered when it was duly presented for registration to the officer so refusing as aforesaid :

Provided that when the officer presiding over Provision for case in which the Judge is the registering officer under this section, the petition shall, within sixty days after the making of such order, be presented to the High Court, and the provisions contained in the former part of this section shall, *mutatis mutandis*, apply to such petition and the order (if any) thereon.

No appeal lies from any order made under this section.

### PART XIII.

#### *Of the fees for registration, searches and copies.*

Fees for registration, searches and copies to be fixed by Local Government.

**88.** Subject to the approval of the Governor General in Council, the Local Government shall prepare a table of fees payable—

for the registration of documents : .

for searching the registers : .

for making or granting copies of reasons, entries or documents, before, on or after registration ;

And of extra or additional fees payable—

for every registration by a Registrar General under section thirty-one, or by a Registrar under section thirty-two :

for special registration under section fifty-two :

for the issue of commissions :

for filing translations :

for attending at private residences :

and for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

The Local Government may from time to time, subject to the like approval, alter such table.

A table of the fees so payable shall be published in the official *Gazette*, and a copy thereof in

English and the Vernacular language of the District shall be exposed to public view in every registration office.

**89.** All fees for the registration of documents under this Act shall be payable on presentation, and all fees received under the provisions of this Act (not being fees payable under section fourteen to officers who are paid wholly or in part by fees), and all penalties received under section twenty-four, shall be remitted to the treasury of the District or Sub-District, or to such other treasury as the Local Government from time to time directs, and shall be credited to Government.

### PART XIV.

#### *Penalties.*

**90.** Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under the provisions of this Act, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

**91.** Whoever intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

**92.** Whoever intentionally delivers to a registering officer in any proceeding under section nineteen or twenty-one a false copy or translation of a document, or a false copy of a map or plan, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**93.** Whoever falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding under this Act, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

**94.** Whoever abets within the meaning of the Indian Penal Code anything made punishable by this Act, under this Act, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

**95.** A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be instituted by the Registrar General,

the Branch Registrar General, the Registrar or the Sub-Registrar, in whose territories, District or Sub-District, as the case may be, the offence has been committed.

All prosecutions under this Act shall be instituted and carried out before a person exercising the powers of a Magistrate or Subordinate Magistrate of the first class; and all fines imposed under this Act may be recovered in the manner prescribed in section sixty-one of the Code of Criminal Procedure.

**96.** Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section two hundred and twenty-eight of the said Code, the words "judicial proceeding" shall include any proceeding under this Act.

#### PART XV.

##### Miscellaneous.

Registering officer not to be liable for anything *bond fide* done or refused in his official capacity.

**97.** No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

**98.** Nothing done by registering officer to be invalidated by defect in his appointment or procedure.

done in good faith pursuant to this Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

**99.** Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator General of Bengal, Madras or Bombay, or for any Official Trustee, or for the Sheriff, Receiver or Registrar of a High Court, to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section sixty-six.

But when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he think fit, refer to any Secretary of Government or to such officer of Government, Administrator General, Official Trustee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

**100.** Notwithstanding anything herein contained, every document of the kinds mentioned in sections seventeen and eighteen, executed in British Burma before the first day of January 1871,

Time for registering documents executed in Burma and Coorg before 1st January 1871.  
and every jama sanad executed in Coorg before that date, shall be accepted for registration, if duly presented for registration within twelve months from such date.

##### Exemptions from Act.

**101.** Nothing contained in this Act or any Exemption of certain documents executed by or in favour of Government. Act hereby repealed shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps:—

(a.) Documents issued, received, or attested by any officer engaged in making a settlement or revision of settlement of land revenue, and which form part of the records of such settlement.

(b.) Documents and maps issued, received, or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, other than waste land, and which form part of the record of such survey.

(c.) Documents which, under any law for the time being in force, are filed annually by patwáris or other officers charged with the preparation of village records.

(d.) Sanaads, inám title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land, in reward for special services.

But all such documents and maps shall, for the purposes of sections forty-eight and fifty, be deemed to have been and to be registered in accordance with the provisions of this Act.

**102.** Subject to such rules and the previous payment of such fees as the Inspection and copies Local Government from time to time prescribes in this behalf, all documents and maps mentioned in section one hundred and one, clauses *a*, *b* and *c*, shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

**103.** A copy of every document mentioned in section one hundred and one, clause *d*, and executed on or after the first day of January 1871 shall, as soon as may be after its execution, be sent by the Local Government to the Registrar or to every Registrar within whose District the whole or any part of the immoveable property comprised in such document is situate, and shall be filed by him in his Book 1.

Copies of sanads to be filed by Registrar. **Madras Inám title-deeds.**  
**104.** Nothing contained in this Act, or in any Act hereby repealed, shall be deemed to require, or to have required, the registration of any title-deed for inám lands issued by the Inám Commissioner in the Presidency of Fort St. George,

The provisions of section one hundred and three shall not apply, and the provisions of section three of Act No. XXVII of 1868 shall be deemed not to have applied, to any such title deed.

Subject to such rules as the Local Government from time to time prescribes in this behalf, all the District Registers of ináms kept under the rules for the adjudication and settlement of inám lands in the said Presidency sanctioned by the Local Government and published in the *Fort St. George Gazette* dated the fourth day of October 1859, shall be open to the inspection of any person applying to inspect the same, and subject as aforesaid, copies of the said registers shall be given to all persons applying for such copies.

## FIRST SCHEDULE.

## PART I.

Serial No. of registered instrument with Page, No. and Volume of Register in which it has been entered.	Names of parties to and No. of the suit, and whether an original or appealed suit.	Description of the immoveable property referred to in the instrument.	Effect of the decree or order on the instrument.	Date on which decree or order was passed.	Name and official designation of judge or officer by whom the decree or order was made.

(Signed) A. B.

## PART II.

Names of parties to, and No. of the suit, and whether an original or appealed suit.	Description of the immoveable property affected by the decree or order.	Effect of the decree or order on the said property.	Date on which decree or order was passed.	Name and official designation of judge or officer by whom the decree or order was made.

(Signed) A. B.

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## SECOND SCHEDULE.

*Form of petition under section 84.*

Stamp  
eight  
annas.

To the Judge of the District Court [or To the Deputy Commissioner] of

The      day of      18 .

The petition of A. B. of

Sheweth—

1. That by an assurance dated the      day of      and made between C. D. of the one part and your petitioner of the other part, certain lands were conveyed to your petitioner absolutely.

2. That such assurance was executed by the said C. D. on the      day of      18 .

3. That the property to which such assurance relates is situate in the Sub-District of the Sub-Registrar of      and in the District of

4. That on the      day of      your petitioner presented the said assurance for registration under "The Indian Registration Act, 1870," in the office of the said Sub-Registrar, and on such presentation the said C. D. appeared personally before the said Sub-Registrar, and admitted the execution of the said assurance [or and falsely denied the execution of the said assurance].

5. That the said C. D. is personally known to the said Sub-Registrar [or adduced evidence that he was the person he represented himself to be, or that your petitioner adduced evidence that the said C. D. was the person he represented himself to be].

6. That the said Sub-Registrar thereupon made an order of refusal, dated the      day of      18 , to register the said assurance and gave your petitioner a copy, which is filed herewith, of the reasons for such order.

7. That your petitioner on the      day of      appealed to the Registrar of      against such order.

8. That the said Registrar thereupon made an order of refusal, dated the      day of      to direct the registration of the said assurance, and gave your petitioner a copy, which is filed herewith, of the reasons for such order.

9. That the reasons referred to in paragraphs 6 and 8 are, as your petitioner submits, insufficient [or that your petitioner has complied with the requirements of the said Act so far as it has been possible for him to do so].

Your petitioner, therefore, prays that your Honour will order the said Sub-Registrar to register the said assurance.

A. B.

*Form of Verification.*

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) A. B.

## STATEMENT OF OBJECTS AND REASONS.

The Indian Registration Act has now been in force for nearly five years. It has gradually been extended to the whole of British India, except Oudh and Burma, and it has attained its two great objects,—discouraging forgery and false evidence, and creating a trustworthy record of title to immoveable property.

In 1868 it was found expedient to exclude from its operation certain instruments executed by, or in favour of, Government, and the Government of Madras has recently applied for similar legislation as regards inám title-deeds.

To consolidate and amend the law on the subject is obviously preferable to adding a fourth Act to the three in which that law is now contained. The present Bill accordingly repeals and re-enacts Acts XX of 1866 and XXVII of 1868. It incorporates the provisions as to registration contained in the Military Cantonments Act No. XXII of 1864, sections 10 and 45. It extends the system of registration to the whole of British India, except Oudh. It renders written authorities to adopt compulsorily registrable. It enables Sub-Registrars to register wills and authorities to adopt and to receive deposits of such documents. It also enables Sub-Registrars to institute prosecutions without the Registrar's sanction; and it excludes from its operation Madras inám title-deeds.

Besides these substantial changes, the Bill effects various minor amendments suggested by the practical experience gained in working the Act of 1866. These may be shortly stated as follows:—

With reference to Mr. Justice Norman's decision in *Jalu Namdar v. Beicha Namdar*, 3 Ben. L. R., A. C. J. 394, "moveable property" has been defined so as to include juice in trees. And "addition" has been made to include, in the case of a Native, his father's name.

In section 10, provision has been made for cases where there are more District Courts than one.

Section 17 has been expressly made applicable to leases from year to year, and to those leases (common in Bengal) which merely reserve a yearly rent.

In *Náráyana Swáyyi's Pillai's* case, 4 Mad. H. C. Rep. 91, Sir Adam Bittleston ruled that the provisions in Act XX of 1866, section 21, as to the description of houses and land, are merely directory. The Bill, section 22, embodies this ruling, which is clearly in accordance with the intention of the Act.

In section 32 the words 'including a Presidency town' have been omitted so as to render it possible for any Local Government to amalgamate in the Mofussil a Registry and a Sub-Registry Office.

It has been held by the Advocate General of Bengal that section 36 of Act XX of 1866, requires the persons executing a document to appear simultaneously before the Registering Officer. Such requirement is obviously inconvenient and unnecessary. The corresponding section of the Bill expressly provides that such appearances, if within the time allowed for presentation, may be either simultaneous or at different times.

In the same section the Bill expressly authorizes the Registering Officer to refuse to register where any person executing the document denies its execution, or where an executant appears to be a minor, an idiot, or a lunatic. This is in accordance with the views of the Advocate General of Madras.

Section 37 empowers the Registering Officer to require the Revenue Officer in whose jurisdiction any executant or witness, whose attendance is desired may be, to issue and to serve a summons requiring him to attend at the Registration Office. Some difficulty has been felt in Madras and elsewhere as to the Revenue Officer thus indicated, and the section has been altered by substituting for "the Revenue Officer" the words "such Revenue or Civil Court as the Local Government directs in this behalf."

In working Part VIII of Act XX of 1866, (as to sending to the Registry Office memoranda of decrees and orders affecting immoveable property) difficulty has been found in recovering the costs of registration. The Bill accordingly provides that the party in whose favour the decree or order has been made, shall himself present and pay for registering the memorandum, and that no such decree or order shall be of any force until a memorandum thereof has been registered. Forms of memoranda are given in the first Schedule. They must be registered within four months of the date of the decree or order, and the operation of the Part is confined to cases when the subject matter is of the value of Rs. 100 or upwards.

Section 48 of that Act provides that registered instruments relating to any moveable or immoveable property shall take effect against oral agreements relating thereto. The effect of this provision is (it has been argued) that a purchaser even of any trivial article bought in a shop and handed over the counter, has against any subsequent registered purchaser a defective title. The Bill accordingly by an additional section (49) precludes the operation of the former clause as regards moveables, where the agreement has been accompanied or followed by delivery of possession.

Certain decisions of the High Court at Fort William have made serious inroads on section 49 of the same Act, which declares that no instrument required to be registered "shall be received in evidence in any civil proceeding in any Court." The High Court has decided that an unregistered document requiring registration as affecting an interest in land is admissible in evidence in a civil proceeding for any purpose for which registration is unnecessary. The section has been re-drawn, so as to preclude, it is hoped, in future, a construction so opposed to the intention of the Legislature.

Section 51 of Act XX of 1866 prescribes the period of limitation for certain suits under a registered contract. The section has been omitted as it will find a fitter place in the Limitation Bill now being prepared in the Legislative Department.

Words have been introduced into section 53, showing clearly that the summary remedy provided on a specially registered bond is available only as against the person signing the agreement mentioned in section 52.

Section 57 has been altered so as to require the copying of such documents only as are admitted to registration.

The note taken by the Registering Officer under section 71, has been made admissible as *prima facie* evidence of the facts therein stated.

As regards the procedure on the deposit of wills, the Bill provides, with reference to the case of *Nagindas*, 3 Bom. H. C. Rep. 135, decided by the present Chief Justice of the High Court at Bombay, that nothing in the Registration Act shall affect the power of any Court by order to compel the production of a will for the purposes of probate. Whenever any such order is made, the Registrar will copy the will in his book No. 4, and make a note on such copy that the original has been removed in pursuance of the order.

Section 84, as to the procedure when a Registrar refuses to register or to direct registration, has been made clearer. The Court has been expressly empowered to summon witnesses and compel them to give evidence; and the discretion reposed in it as to directing registration has been limited in accordance with the views of Sir Adam Bittleston (4 Mad. H. C. Rep. 97). Appeals from orders under this section have been expressly precluded (3 Bom. H. C. Rep. A. C. J. 104).

Provision has been made for admitting to registration, within twelve months after the new Act comes into force, of jama sanads executed in Coorg.

Lastly, the sections relating to penalties have been placed in a separate Part, and the wording of the Bill has been carefully settled with reference to all the reported decisions of the High Courts on Acts XVI of 1864 and XX of 1866.

F. R. COCKERELL.

SIMLA; }  
The 18th September 1870. }

WHITLEY STOKES,  
Secy. to the Govt. of India.

The following Bill, and Statement of Objects and Reasons accompanying it, are published for general information, by order of His Excellency the Governor General, under the 19th of the Rules for the Conduct of Business at Meetings of the Council of the Governor General of India for the purpose of making Laws and Regulations:—

No. 25 of 1870.

*A Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in Bengal.*

Whereas it is expedient to consolidate and amend the law relating to the District and Subordinate Civil Courts in the territories respectively under the governments of the Lieutenant-Governors of the

Lower and North-Western Provinces, of the Presidency of Fort William in Bengal; It is hereby enacted as follows:—

**PART I.—Preliminary.**

1. This Act may be called "The Bengal Civil Courts Act, 1870."

It extends to the territories for the time being Local extent respectively under the governments of the said Lieutenant-Governors except such portions thereof as have been, or may hereafter be, removed by express enactment from the jurisdiction of the High Courts.

Commencement. And it shall come into force on the passing thereof.

2. The Regulations and Acts mentioned in Repeal of enactments. the first Schedule hereto annexed are repealed to the extent specified in the third column of such Schedule.

**PART II.—Constitution of Civil Courts.**

3. The number of District Judges to be appointed under this Act shall be Number of District Judges. fixed, and may, from time to time, be altered by the Local Government: Provided that no increase to the present number of District Judges shall be made by such Government without the previous sanction of the Governor General in Council.

4. The number of Subordinate Judges and Munsifs to be appointed under this Act in each District, shall be fixed, and may, from time to time, be altered by the Local Government: Provided that no increase of the total number so appointed before the passing of this Act shall be made without the previous sanction of the Governor General in Council.

5. Whenever the office of District Judge or Subordinate Judge under this Act is vacant, or when it is necessary to increase the number of Subordinate Judges, the Local Government shall, subject to the provisions of section three, supply such vacancy or appoint such additional Subordinate Judges, as it thinks fit.

6. Whenever the office of a Munsif is vacant, or when it is necessary to increase the number of Munsifs, the High Court shall nominate such person as it thinks fit to be a Munsif, and the Local Government shall appoint him accordingly:

Provided that the Local Government may, with the sanction of the Governor General in Council, make rules as to the qualifications of persons to be appointed to the office of Munsif under this Act; and on such rules being made, no person shall be nominated to such office unless he possesses the qualifications required by the said rules.

7. The present Judges of the Zila Courts, First District Subordinate Judges and Munsifs shall be the first District Judges, Subordinate Judges, and Munsifs under this Act.

8. The Local Government shall have power to fix, and, from time to time, alter the place at which any Court under this Act is to be held.

Power to fix sites of Court. 9. Every District Judge, Subordinate Judge or Munsif appointed after the Oath of office. passing of this Act shall, previously to entering on the duties of his office, make and subscribe a solemn declaration according to the form in the second Schedule to this Act.

Such declaration shall be made—  
by a District Judge, either before his predecessor in such office, or before the Magistrate of the District,

by a Sub-Judge or Munsif, before the District Judge.

10. Every Court under this Act shall use a seal of such form and dimensions Seals of Courts. as shall, from time to time, be prescribed by the Local Government.

11. Every District Judge, Subordinate Judge, and Munsif under this Act District Judges, Subordinate Judges, and Munsifs to be deemed Civil Courts. shall be deemed to be a Civil Court within the meaning of the Code of Civil Procedure and of this Act.

**PART III.—Ordinary Jurisdiction.**

12. The Local Government shall fix, and may, Power to fix local limits of jurisdiction. vary the local limits of the jurisdiction of any Civil Court under this Act.

13. The jurisdiction of a District Judge or Subordinate Judge extends, Extent of original jurisdiction of District Judge or Subordinate Judge. subject to the rules contained in the Code of Civil Procedure, to all original suits cognizable by the Civil Courts.

14. The jurisdiction of a Munsif extends to Extent of Munsif's jurisdiction. all like suits of which the jurisdiction amount or value in dispute does not exceed one thousand rupees.

15. A regular or summary appeal shall, when Appeals from District Judge. such appeal is allowed by law, lie from the decrees and orders of a District Judge to the High Court.

16. Appeals from the decrees and orders of Subordinate Judges and Munsifs shall, when such appeals are Appeals from Subordinate Judges and Munsifs. allowed by law, lie to the District Judge, except when the amount or value of the subject-matter of the suit exceeds five thousand rupees, in which case the appeal shall lie to the High Court.

17. Every Court established under this Act shall have power to require a witness, or party to any suit pending in such Court, to take such oath as is prescribed by the law for the time being in force.

**18. Where in any suit it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Muhammadan law in the case**

Certain decisions to be according to Muhammadan law in case of Muhammadans, and to Hindú law in case of Hindús.

Muhammadan law in the case of Muhammadans, and the Hindú law in the case of Hindús, shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished.

Where no specific rule exists, the Court shall act according to justice, equity, and good conscience.

**19. No District Judge, Subordinate Judge or Munsif shall try any suit in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit.**

No District Judge or Subordinate Judge shall try any appeal against a decree or order passed by himself in another capacity.

When any such suit, proceeding or appeal comes before any such officer as aforesaid, he shall forthwith transmit the whole record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference. The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure.

**PART IV.—Special Jurisdiction.****20. When the number of appeals from the orders of a Subordinate Judge pending before any District Judge requires the aid of additional Judges.**

Provision for appointing additional Judges. Adjudication and decision of such appeals, the Local Government may, upon the recommendation of the High Court, and (so far only as regards the additional expenditure involved in such appointment) subject to the sanction of the Governor General in Council, appoint such additional Judges as may be requisite.

The Additional Judges so appointed shall, previously to entering upon the execution of the duties of their office, make and subscribe the same declaration as is required to be made by the District Judges.

They shall perform any of the duties of a District Judge under Part III, that may be assigned to them, and, in the performance of such duties, shall exercise the same powers and be guided by the same rules as the District Judge.

The present Additional Judges shall be deemed to have been appointed under this Act.

**21. The Local Government may invest any Subordinate Judge with the powers of a Munsif under section fourteen, and may define and, from time to time, vary the local limits within which such powers are to be exercised.**

**22. Every District Judge may, from time to time, subject to the orders of the High Court, refer to any Subordinate Judge under his control any appeals depending before him from the decisions of Munsifs; and such Subordinate Judge shall hear and dispose of such appeals accordingly.****23. The High Court may, from time to time,**

Power to transfer proceedings pending before District Judge. by order, authorize any District Judge to transfer to a Subordinate Judge or Munsif certain proceedings pending before District Judge any civil proceeding (not being suits), or any class of such proceedings, specified in such order, and then pending or thereafter instituted, before such District Judge.

All proceedings so transferred shall be disposed of by the Subordinate Judge or Munsif (as the case may be) according to the rules prescribed for the guidance of District Judges in like cases:

Provided that an appeal from the order of the Subordinate Judge or Munsif in such cases shall lie to the District Judge.

An appeal from his order thereon shall lie to the High Court if an appeal from the decision of the Judge in such proceedings is allowed by the law in force for the time being.

**24. The Local Government may invest, within such local limits as it from time to time appoints, any Subordinate Judge with the jurisdiction of a Judge of a**

Court of Small Causes, for the trial of suits cognizable by such Courts, up to the amount of five hundred rupees, and any Munsif with similar jurisdiction up to the amount of fifty rupees, and may, whenever it thinks fit, withdraw such jurisdiction from the Subordinate Judge or Munsif so invested.

**25. Section fifty-one of Act No. XI of 1865**

(to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the Ordinary Original Civil Jurisdiction of the High Courts of Judicature), shall be read as if for the words "Principal Sadr Amín," the words "Subordinate Judge" were substituted.

**PART V.—Misfeasance.**

**26. A District Judge or Additional Judge may, for any misconduct, be suspended or removed by the Local Government.**

**27. The High Court may, whenever it sees urgent necessity for so doing, suspend any Subordinate Judge under its control.**

Whenever the High Court exercises this power, it shall forthwith report the circumstances of the suspension, and the Local Government may direct the dismissal of the Subordinate Judge, or make such other order as the case may require.

**28.** The High Court may suspend any Munsif or may appoint a Commission for enquiring into his alleged misconduct.

Suspension of Munsifs by High Court.  
The provisions of Act No. XXXVII of 1850 (*for regulating inquiries into the behaviour of public servants*), shall apply to enquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

On receiving the report of the result of such inquiry, the High Court may remove or suspend from office such Munsif, or may reduce him to a lower grade.

**29.** Any District Judge may, whenever he sees urgent necessity for so doing, suspend from office any Munsif under his control.

Suspension of Munsifs by District Judges.  
Whenever a District Judge suspends from office any such Munsif, he shall forthwith send to the High Court a full report of the circumstances of the suspension, together with the evidence, if any, and the High Court shall make such order thereon as it thinks fit.

#### PART VI.—Ministerial Officers.

**30.** The Ministerial Officers of the District Courts shall be appointed, and may be removed, suspended, or fined in an amount not exceeding one month's salary, by the Judges of such Courts, whose orders in such matters shall be final.

**31.** The Ministerial Officers of the Courts of Subordinate Judges and Munsifs shall be nominated and appointed by those Courts respectively, subject to the approval of the District Judge within whose jurisdiction such Courts are situate.

Appointment, removal and suspension of Ministerial Officers, of Subordinate Judges and Munsifs.  
Every such Court may, by order, remove or suspend from office, or fine in an amount not exceeding one month's salary, any of its Ministerial Officers who is guilty of any misconduct or neglect in the performance of the duties of his office. But every such order shall be subject to appeal to the District Judge; and the rules for the time being applicable to appeals to the Court of Session from orders of the Criminal Courts subordinate thereto shall apply to all appeals under this section.

Nothing in this section shall exempt the offender from any penal or other consequences to which he may be liable under any other law in force for the time being.

**32.** All fines imposed under this Part may be recovered by deduction from the salary of the offender.

#### PART VII.—Miscellaneous.

**33.** In the event of the death of the District Judge, or of his being incapacitated by illness or otherwise or absence of District Judge for the performance of his duties, or of his absence from the station in which his Court is held, the Additional Judge, or, if there is no Additional Judge attached to such Court, the senior Subordinate Judge of the District shall, without interruption to his ordinary duties, assume charge of the Judge's office, and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the execution of processes and the like functions, and shall continue in charge of the office until it is resumed by the District Judge or assumed by an Officer duly appointed thereto.

**34.** A District Judge, on the occurrence within his District of any vacancy in the office of Munsif, may, pending the orders of the High Court thereon, appoint such person as he thinks fit to act in such office.

And he shall forthwith report to the High Court the occurrence of every such vacancy and such appointment.

**35.** The general control over all the Civil Courts in any District is vested Control of Civil Courts in a District. in the District Judge. He may issue such directions for the guidance of the Subordinate Courts with respect to any matter not provided for by law as he thinks necessary, and the said Courts shall obey such directions.

**36.** Subject to such orders as may, from time to time, be issued by the Governor General in Council or by the Local Government, the High Courts shall prepare a list of days to be observed in each year as close holidays in such Courts and in the Courts, respectively, subordinate to them, and such list shall be published at the commencement of each year in the local official *Gazette*.

## FIRST SCHEDULE.

Number and year.	Title.	Extent of Repeal.
Regulation III, 1793 ...	A Regulation for extending and defining the jurisdiction of the Courts of Dewanny Adalwut, or Courts of Judicature for the trial of civil suits in the first instance, established in the several Zillahs, and in the cities of Patna, Dacca, and Moorshedabad.	So much as has not been repealed.
„ IV, 1793 ...	A Regulation for receiving, trying, and deciding suits or complaints declared cognizable in the Courts of Dewanny Adawlut established in the several Zillahs, and in the Courts of Patna, Dacca, and Moorshedabad.	Section fifteen.
„ VIII, 1833 ...	A Regulation for the occasional appointment of additional Judges of the Zillah and City Courts.	The whole.
Act L of 1860 ...	An Act to amend the law relating to vacations in the Civil Courts within the Presidency of Fort William in Bengal.	The whole.
„ XVI of 1868 ...	An Act to consolidate and amend the law relating to Principal Sadr Amīns, Sadr Amīns, and Munsifs in Bengal, and for other purposes.	The whole.
„ II of 1870 ...	An Act to provide for the appointment of Additional Subordinate Judges and Munsifs in the Presidency of Fort William.	The whole.

## SECOND SCHEDULE.

*Form of declaration to be administered to persons appointed to the office of District Judge, Additional Judge, Subordinate Judge, or Munsif.*

I, A B, appointed to the office of \_\_\_\_\_ of \_\_\_\_\_ do solemnly declare that, in the trial and determination of all suits which may come under my cognizance, and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgment without partiality, favour, or affection; that I will not directly or indirectly receive, or knowingly allow any other person to receive on my behalf, any money, effects, or property, on account of any suit that may come before me for decision, or on account of any public duty which I may have to execute.

I will strictly adhere to all the rules prescribed for my guidance, and I will, in all respects, truly and faithfully execute the trust reposed in me.

(Signed) A. B.

District [or Additional or Subordinate] Judge of \_\_\_\_\_  
Munsif of \_\_\_\_\_

## STATEMENT OF OBJECTS AND REASONS.

The law relating to the constitution and jurisdiction of the District (or zila) courts in Lower Bengal and the North-Western Provinces is now spread over the following enactments:—

Regulation III of 1793 (Bengal Code).		
" IV	"	"
" VII of 1795	"	"
" VIII	"	"
" II of 1803	"	"
" III	"	"
" VIII of 1805	"	"
" VIII of 1833	"	"
Act L of 1860.		

The repeal of Regulations VII of 1795, VIII of 1795 (except section ten), II and III of 1803, and VIII of 1805, as enactments purporting only to extend to the North-Western Provinces the provisions of the earlier Regulations of 1793 in regard to the zila courts, has been already proposed in connection with the Bill for defining the local extent of the general Regulations and Acts now before the Council.

In pursuance of the general scheme of consolidation, it has now become necessary to gather together the remaining fragments of the Regulation-law on this subject, and to combine therewith the recently consolidated law (Act XVI of

1868) regarding the civil courts subordinate to the zila courts.

A further object of the present Bill is to supply certain omissions of Act XVI of 1868 in regard to the jurisdiction of sub-Judges and Munsifs.

The older Regulations provide that the zila courts shall, in the determination of cases relating to inheritance, marriage, caste, or religious usage, be guided by the Muhammadan law where the parties to the cause are Muhammadans, and by the Hindú law where the parties are Hindús; also, that in cases for which no specific rule exists, the said courts shall act in accordance with equity and good conscience.

The application of these rules was, on the subsequent creation of the Courts of Munsifs, Sadr Amīns (now designated Munsifs) and Principal Sadr Amīns (now Subordinate Judges) extended to such courts; but the extending provisions were, apparently through inadvertence, included in the wholesale repeals which followed the introduction of the Code of Civil Procedure, and they were not revived when Act XVI of 1868 was enacted.

SIMLA, } F. R. COCKERELL.  
The 7th October 1870. }

WHITLEY STOKES,  
*Secy. to the Govt. of India.*



# The Gazette of India.

Published by Authority.

CALCUTTA, SATURDAY, NOVEMBER 5, 1870.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 19.

GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Bill, and Statement of Objects and Reasons accompanying it, are published for general information by order of His Excellency the Governor General, under the 19th of the Rules for the Conduct of Business at Meetings of the Council of the Governor General of India for the purpose of making Laws and Regulations:—

No. 26 of 1870.

## INSOLVENCY BILL.

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## A BILL TO AMEND THE LAW OF INSOLVENCY.

Whereas it is expedient to amend the law relating to Insolvency; It is hereby enacted as follows:—

*Preamble.**Short title.*

1. This Act may be cited as "The Indian Insolvency Act, 1871."

*Extent of Act.*

2. This Act extends to the whole of British India.

3. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-one.

4. On and from that day the eleventh and twelfth of Victoria, Chapter twenty-one, shall be repealed.

Repeal of 11 & 12 Vic., cap. 21.

5. In this Act,

Interpretation of certain terms in the Act.

if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them; that is to say,

"The Court" shall mean the court having jurisdiction in Insolvency as by this Act provided:

*Court.*

"The Registrar" shall mean the Registrar of "the Court" as above defined or, where there is no Registrar, such officer as the Court appoints in this behalf:

"Prescribed" shall mean prescribed by rules of Court to be made as in this Act provided:

"Property" shall mean and include money, goods, things in action, land, "Property." and every description of property, whether moveable or immoveable; also, obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined:

"Debt provable in insolvency" shall include any debt or liability by this "Debt." Act made provable in insolvency:

6. A partnership, association, or company corporate, or registered under companies and large partnerships. "The Indian Companies Act, 1866," shall not be adjudged insolvent under this Act.

## PART I.

## ADJUDICATION, VESTING AND ADMINISTRATION OF PROPERTY.

*Adjudication.*

7. A single creditor, or two or more creditors, if the debt due to such single Petition for adjudication creditor or the aggregate amount of debts due to such several creditors, from any debtor, amount to a sum of not less than five hundred rupees, may present a petition to the Court, praying that the debtor be adjudged an insolvent, and alleging as the ground for such adjudication any one or more of the following acts or defaults, hereinafter deemed to be and included under the expression "acts of insolvency":

- (1) That the debtor has, in India or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally;
- (2) That the debtor has, in India or elsewhere, made a fraudulent conveyance, gift, delivery, or transfer of his property or of any part thereof;
- (3) That the debtor has, with intent to defeat or delay his creditors, done any of the following things, namely, departed out of India, or departed from his dwelling house, or otherwise absented himself; or begun to keep house; or being out of India, remained out of India, or suffered himself to be outlawed;

- (4.) That the debtor has filed in the prescribed manner in the Court a declaration admitting his inability to pay his debts :
- (5.) That execution issued against the debtor on any legal process for the purpose of obtaining payment of not less than five hundred rupees has been levied by seizure and sale of his goods :
- (6.) That the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons requiring the debtor to pay a sum due, of an amount of not less than five hundred rupees, and the debtor has for the space of fourteen days succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same.

But no person shall be adjudged an insolvent on any of the above grounds unless the act of insolvency on which the adjudication is grounded has occurred within six months before the presentation of the petition for adjudication.

The debt of the petitioning creditor must be a liquidated sum due and must not be a secured debt, unless the petitioner state in his petition that he will be ready to give up such security for the benefit of the creditors in the event of the debtor being adjudicated an insolvent, or unless the petitioner is willing to give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated; but he shall, on an application being made by the trustee within the prescribed time after the date of adjudication, give up his security to such trustee for the benefit of the creditors upon payment of such estimated value.

#### 8. A debtor's summons may be granted by the Court on a creditor proving to its satisfaction that a debt sufficient to support a

Proceedings in relation to a debtor's summons.

petition in insolvency is due to him from the person against whom the summons is sought, and that the creditor has failed to obtain payment of his debt, after using reasonable efforts to do so.

The summons shall be in the prescribed form, resembling, as nearly as circumstances admit, a summons issued under the Code of Civil Procedure. It shall state that in the event of the debtor failing to pay the sum specified in the summons, or to compound for the same to the satisfaction of the creditor, a petition may be presented against him, praying that he may be adjudged an insolvent.

The summons shall have an endorsement thereon to the like effect, or such other prescribed endorsement as may be best calculated to indicate to the debtor the nature of the document served upon him, and the consequences of inattention to the requisitions therein made.

Any debtor served with a debtor's summons may apply to the Court, in the prescribed manner and within the prescribed time, to dismiss such summons, on the ground that he is not indebted to the creditor serving such summons, or that he is not indebted to such amount as will justify such creditor in presenting an insolvency petition against him;

and the Court may dismiss the summons, with or without costs, if satisfied with the allegations made by the debtor, or it may, upon such security

(if any) being given as the Court may require for payment to the creditor of the debt alleged by him to be due, and the costs of establishing such debt, stay all proceedings on the summons for such time as will be required for the trial of the question relating to such debt.

#### 9. A petition praying that a debtor may be adjudged an insolvent, in this

Proceedings on petition.

Act referred to as an insolvency petition, shall be served in the prescribed manner.

At the hearing, the Court shall require proof of the debt of the petitioning creditor, and of the trading, if necessary, and of the act of insolvency, or, if more than one act of insolvency is alleged in the petition, of some one of the alleged acts of insolvency, and, if satisfied with such proof, shall adjudge the debtor to be insolvent.

The Court may adjourn the petition, either conditionally or unconditionally, for the procurement of further evidence, or for any other just cause, or may dismiss the petition, with or without costs, as the Court thinks just.

#### 10. Where the debtor appears on the petition,

Proceedings if debt of petitioning creditor is contested.

and denies that he is indebted to the petitioner, or that he is indebted to such amount as would justify the petitioner in presenting an insolvency petition against him, the Court, upon such security (if any) being given as the Court may require, for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing such debt, may stay all proceedings on the petition for such time as may be required for trial of the question relating to such debt, and such trial shall be had in manner hereinbefore provided with respect to disputed debts under debtors' summonses.

Where proceedings are stayed, the Court may, if by reason of the delay caused by such stay of proceedings or for any other cause it thinks just, adjudge the debtor an insolvent on the petition of some other creditor, and shall thereupon dismiss, upon such terms as it thinks just, the petition proceedings in which have been stayed as aforesaid.

#### 11. A copy of an order of the Court adjudg-

Advertisement of order of adjudication.

ing the debtor to be insolvent shall be published in the local official Gazette, and be advertised locally in such manner (if any) as may be prescribed, and the date of such order shall be the date of the adjudication for the purposes of this Act, and the production of a copy of the Gazette containing such order as aforesaid shall be conclusive evidence in all legal proceedings of the debtor having been duly adjudged an insolvent, and of the date of the adjudication.

#### 12. The insolvency of a debtor shall be deemed

Definition of commencement of insolvency.

to have relation back to and to commence on the comple-

mentation of the act of insolvency

on which the order adjudging him to be insol-

vent is made.

If the insolvent is proved to have committed more acts of insolvency than one, the insolvency shall be deemed to relate back to and to commence at the time of the first of the acts of insolvency that may be proved to have been committed by the insolvent within twelve months next preceding the order of adjudication. The insolvency shall

not relate to any prior act of insolvency, unless at the time of committing such prior act the insolvent was indebted to some creditor or creditors in a sum or sums sufficient to support a petition in insolvency, and unless such debt or debts are still remaining due at the time of the adjudication.

**13.** Where a debtor is adjudicated an insolvent, no creditor to whom the Creditors bound by insolvent is indebted in respect of any debt provable in the insolvency shall have any remedy against the property or person of the insolvent in respect of such debt except in manner directed by this Act.

This section shall not affect the power of any creditor holding a security upon the property of the insolvent to realize or otherwise deal with such security in the same manner as he would have been entitled to realize or deal with the same if this section had not been passed.

**14.** The Court may, at any time after the presentation of an insolvency petition, petition against the debtor, to restrain suits, &c., and restrain further proceedings appoint receiver. in any suit, execution, or other legal process against him in respect of any debt provable in insolvency, or it may allow such proceedings, whether in progress at the commencement of the insolvency or commenced during its continuance, to proceed upon such terms as the Court thinks just.

The Court may also, at any time after the presentation of such petition, appoint a receiver or manager of the property or business of the debtor against whom the petition is presented, or of any part thereof, and may direct immediate possession to be taken of such property or business, or any part thereof.

#### *Appointment of Trustee.*

**15.** When an order has been made adjudging a debtor insolvent, herein referred to as an order of adjudication, the property of the insolvent shall become divisible amongst his creditors in proportion to the debts proved by them in the insolvency; and for the purpose of effecting such division the Court shall, as soon as may be, summon a general meeting of his creditors, and the creditors assembled at such meeting shall and may do as follows:

- (1.) They shall, by resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the insolvent, at such remuneration (if any) as they may from time to time determine, or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned :
- (2.) They shall, when they appoint a trustee, by resolution declare what security is to be given, and to whom, by the person so appointed, before he enters on the office of trustee :
- (3.) They shall, by resolution, appoint some other fit persons, not exceeding five in number, and being creditors qualified to vote at such first meeting of creditors as is in this Act mentioned, or authorized in the prescribed form by creditors so qualified to vote, to form a committee of in-

spection for the purpose of superintending the administration by the trustee of the insolvent's property :

(4.) They may, by resolution, give directions as to the manner in which the property is to be administered by the trustee, and it shall be the duty of the trustee to conform to such directions, unless the Court for some just cause otherwise orders.

**16.** The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise the following particulars :

- (1.) Property held by the insolvent on trust for any other person :
- (2.) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding two hundred rupees in the whole :

But it shall comprise the following particulars :—

- (3.) All such property as may belong to or be vested in the insolvent at the commencement of the insolvency, or may be acquired by or devolve on him during its continuance :
- (4.) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or during its continuance :
- (5.) All goods and chattels being, at the commencement of the insolvency, in the possession, order, or disposition of the insolvent, by the consent and permission of the true owner, of which goods and chattels the insolvent is reputed owner, or of which he has taken upon himself the sale or disposition as owner: provided that things in action, other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause.

**17.** The general meeting of creditors to be summoned as aforesaid by Regulations as to first meeting of creditors. the Court, and in this Act referred to as the first meeting of creditors, shall be held in the prescribed manner and subject to the prescribed regulations as to the quorum, adjournment of meeting, and all other matters relating to the conduct of the meeting or the proceedings thereat :

Provided that,—

1. The meeting shall be presided over by the registrar, or, in the event of his being unable to attend through illness or any unavoidable cause, by such chairman as the meeting may elect :
2. No person shall be entitled to vote as a creditor unless at or previously to the meeting he has in the prescribed manner proved a debt provable under the insolvency to be due to him :
3. No creditor shall vote at the said meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained :

4. A secured creditor shall, for the purpose of voting, be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security; and the amount of such balance shall, until the security be realized, be determined in the prescribed manner. He may, however, at or previously to the meeting of creditors, give up the security to the trustee, and thereupon he shall rank as a creditor in respect of the whole sum due to him :
5. A "secured creditor" shall in this Act mean any creditor holding any mortgage, charge, or lien on the insolvent's estate, or any part thereof, as security for a debt due to him :
6. Votes may be given either personally or by proxy :
7. An ordinary resolution shall be decided by a majority in value of the creditors present personally or by proxy at the meeting and voting on such resolution :
8. A special resolution shall be decided by a majority in number, and three-fourths in value, of the creditors present personally or by proxy at the meeting and voting on such resolution.

**18.** Until a trustee is appointed the registrar shall be the trustee for the Devolution of property on trustee purposes of this Act, and immediately upon the order of adjudication being made the property of the insolvent shall vest in the registrar. On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.

The expression "trustee," when used in this Act, shall include the person for the time being filling the office of trustee, whether he be the registrar or not; but when the registrar holds the office of trustee he shall, unless the Court otherwise orders, in the administration of the property of the insolvent, apply to the Court for directions as to the mode of administering such property, and shall not take possession thereof unless directed by the Court.

**19.** The appointment of a trustee shall be reported to the Court, and the Court, upon being satisfied that the requisite security has been entered into by him, shall give a certificate declaring him to be trustee of the insolvency named in the certificate: such certificate shall be conclusive evidence of the appointment of the trustee, and such appointment shall date from the date of the certificate.

When the registrar holds the office of trustee, or when the trustee is changed, a like certificate of the Court may be made declaring the person therein named to be trustee, and such certificate shall be conclusive evidence of the person therein named being trustee.

#### *Administration of Property.*

**20.** The insolvent shall, to the utmost of his power, aid in the realization of his property, and the distribution of the proceeds amongst his creditors.

He shall produce a statement of his affairs to the first meeting of creditors, and shall be publicly examined thereon on a day to be named by the

Court, and subject to such adjourned public examination as the Court may direct.

He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such meetings of his creditors, wait at such times on the trustee, execute such powers of attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the trustee, or may be prescribed by rules of Court, or be directed by the Court by any special order or orders made in reference to any particular insolvency, or made on the occasion of any special application by the trustee or any creditor.

If the insolvent wilfully fail to perform the duties imposed on him by this section, or if he fail to deliver up possession to the trustee of any part of his property, which is divisible amongst his creditors under this Act, and which may for the time being be in the possession or under the control of such insolvent, he shall, in addition to any other punishment to which he may be subject, be deemed guilty of an offence under the Indian Penal Code, section one hundred and eighty-seven, and may be punished accordingly.

**21.** The trustee shall, in the administration of Conduct of trustee, and the property of the insolvent appeal to Court against and in the distribution thereof of amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection; and any directions so given by the creditors at any general meeting shall be deemed to override any directions given by the committee of inspection.

The trustee shall call a meeting of the committee of inspection once at least every three months, when they shall audit his accounts, and determine whether any or what dividend is to be paid; he may also call special meetings of the said committee as he thinks necessary.

Subject to the provisions of this Act, and to such directions as aforesaid, the trustee shall exercise his own discretion in the management of the estate, and its distribution amongst the creditors.

The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes; he may also apply to the Court, in manner prescribed, for directions in relation to any particular matter arising under the insolvency.

The insolvent, or any creditor, debtor, or other person aggrieved by any act of the trustee, may apply to the Court, and the Court may confirm, reverse, or modify the act complained of, and make such order in the premises as it thinks just.

The Court may from time to time, during the continuance of an insolvency, summon general meetings of the creditors for the purpose of ascertaining their wishes, and may, if the Court thinks fit, direct the registrar to preside at such meetings.

The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent, be in the same position in all respects as if he were a receiver of such property appointed by the Court under the Code of Civil Procedure, and the Court may, on his appli-

cation, enforce such acquisition or retention of property accordingly.

**22.** The provisions of this Act with respect to Regulations as to general meetings of creditors subsequent to first meeting. the first general meeting of creditors shall apply to any subsequent general meeting of creditors in an insolvency, with this exception, that subsequent meetings of creditors may be summoned by the trustee, or by a member of the committee of inspection,

and that such meetings may, unless otherwise directed by the Court in the case of meetings summoned by the Court, be presided over by any person chosen by the creditors assembled at such meeting,

and that any creditor whose debt has been proved, or the value of whose debt has been ascertained at or subsequently to such first meeting, shall be allowed to be present and to vote thereat.

#### *Dealings with Insolvent's Property.*

**23.** Where any portion of the property of the insolvent consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the right to transfer such property shall be absolutely vested in the trustee to the same extent as the insolvent might have exercised the same if he had not become insolvent.

Where any portion of the property of the insolvent consists of things in action, any suit or other proceeding for the recovery of such things instituted by the trustee shall be instituted in his official name, as in this Act provided; and such things shall, for the purpose of such suit or other proceeding, be deemed to be assignable in law, and to have been duly assigned to the trustee in his official capacity.

The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the insolvent, and all other property capable of manual delivery. The trustee shall keep, in such manner as rules of Court direct, proper books, in which he shall from time to time make or cause to be made entries or minutes of proceedings at meetings, and of such other matters as rules of Court direct, and any creditor of the insolvent may, subject to the control of the Court, personally or by his agent inspect such books.

**24.** When any property of the insolvent acquired by the trustee under this Act consists of land of any tenure burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding he has endeavoured to sell, or has taken possession of such property or exercised any act of ownership in relation thereto, may, by writing under his hand, disclaim such property.

Upon the execution of such disclaimer the property disclaimed shall,

if the same is a contract, be deemed to be determined from the date of the order of adjudication, and if the same is a lease, be deemed to have been surrendered on the same date,

and if the same be shares in any company, be deemed to be forfeited from that date,

and if any other species of property, it shall revert to the person entitled on the determination of the estate or interest of the insolvent, but if there shall be no person in existence so entitled, then in no case shall any estate or interest therein remain in the insolvent.

Any person interested in any disclaimed property may apply to the Court, and the Court may, upon such application, order possession of the disclaimed property to be delivered up to him, or make such other order as to the possession thereof as may be just.

Any person injured by the operation of this section shall be deemed a creditor of the insolvent to the extent of such injury, and may accordingly prove the same as a debt under the insolvency.

**25.** Any person interested in such property as is mentioned in the first

Limitation of time for disclaimer.  
may give notice in writing to the trustee to decide whether he will disclaim it or not. If the trustee fails, within twenty-eight days after the receipt of such application or such further time as may be allowed by the Court, he shall not be entitled to disclaim any such property.

**26.** Subject to the provisions of this Act, the

Power of trustee to deal with property.  
trustee shall have power to do the following things:

- (1.) To receive and decide upon proof of debts in the prescribed manner, and for such purpose to administer oaths:
- (2.) To carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same:
- (3.) To bring or defend any suit, or other legal proceeding relating to the property of the insolvent:
- (4.) To deal with any property to which the insolvent is beneficially entitled as tenant in tail in the same manner as the insolvent might have dealt with the same:
- (5.) To exercise any powers the capacity to exercise which is vested in him under this Act, and to execute all powers-of-attorney, deeds, and other instruments expedient or necessary for the purpose of carrying into effect the provisions of this Act:
- (6.) To sell all the property of the insolvent (including the goodwill of the business, if any, and the book-debts due or growing due to the insolvent) by public auction or private contract, with power, if he thinks fit, to transfer the whole thereof to any person or company, or to sell the same in parcels:
- (7.) To give for any monies received by him, receipts which shall effectually discharge the persons paying such monies from all responsibility in respect of the application thereof:
- (8.) To prove, rank, claim, and draw a dividend in the matter of the insolvency of any debtor of the insolvent.

**27.** The trustee may appoint the insolvent himself to superintend the management of the property or of any part thereof, or to Power to allow insolvent to manage property.

carry on the insolvent's trade (if any) for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the creditors direct.

**28.** The trustee may, with the sanction of the committee of inspection, do all or any of the following things:

- (1) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts :
- (2) refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist, between the insolvent and any debtor or person who may have incurred any liability to the insolvent, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon :
- (3) make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors in respect of any debts provable under the insolvency :
- (4) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the insolvent, made or capable of being made on the trustee by any person or by the trustee on any person :
- (5) divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot advantageously be realized by sale.

The sanction given for the purposes of this section may be a general permission to do all or any of the above-mentioned things, or a permission to do all or any of them in any specified case or cases.

**29.** The trustee may, with the sanction of a special resolution of the creditors assembled at any general scheme of arrangement.

Power of trustee to accept composition or scheme of arrangement. meeting of which notice has been given specifying the object of such meeting, accept any composition offered by the insolvent, or assent to any general scheme of settlement of the affairs of the insolvent upon such terms as may be thought expedient, and with or without a condition that the order of adjudication is to be annulled, subject nevertheless to the approval of the Court, to be testified by the Judge of the Court signing the instrument containing the terms of such composition or scheme, or embodying such terms in an order of the Court.

Where the annulment of the order of adjudication is made a condition of any composition with the insolvent or of any general scheme for the liquidation of his affairs, the Court, if it approves of such composition or general scheme, shall annul the adjudication on an application made by or on behalf

of any person interested, and the adjudication shall be annulled from and after the date of the order annulling the same.

The provisions of any composition or general scheme made in pursuance of this Act may be enforced by the Court on a motion made in a summary manner by any person interested, and any disobedience of the order of the Court made on such motion shall be deemed an offence under the Indian Penal Code, section 187. The approval of the Court shall be conclusive as to the validity of any such composition or scheme, and it shall be binding on all the creditors so far as relates to any debts due to them and provable under the insolvency.

**30.** A trustee may contract to be paid a certain sum by way of percentage Trustee may be paid for services.

including (where the trustee is an attorney or vakil) all professional services, and any such contract shall, notwithstanding any law to the contrary, be lawful.

No trustee shall, without the consent of the committee of inspection, employ an attorney, vakil or other agent.

**31.** The trustee shall, from all sums from time to time received by him Trustees to pay monies into Bank. under this Act, deduct three per centum, and pay such percentage into the General or District Treasury to the credit of the Government of India, and shall pay the residue into such Bank as the majority of the creditors in number and value at any general meeting appoint, and failing such appointment into the General or District Treasury. If the trustee at any time keep in his hands any such sum exceeding five hundred rupees for more than ten days he shall be subject to the following liabilities; that is to say,

(1.) He shall pay interest at the rate of twenty per centum per annum on the excess of such sum above five hundred rupees as he may retain in his hands :

(2.) Unless he can prove to the satisfaction of the Court that his reason for retaining the money was sufficient, he shall, on the application of any creditor, be dismissed from his office by the Court, and shall have no claim for remuneration, and be liable to any expenses to which the creditors may be put by or in consequence of his dismissal.

Any trustee failing to deduct and pay the said percentage as prescribed by this section shall be liable to fine of double the amount which should have been so deducted and paid.

All monies received by Government under this section shall be applied to defray the salaries of the Comptrollers in Insolvency, their clerks and servants, and the other expenses of working this Act.

#### *Payment of Debts and Distribution of Assets.*

**32.** Demands in the nature of unliquidated damages arising otherwise

Description of debts provable in insolvency. than by reason of a contract or promise shall not be provable in insolvency, and no person having notice of any act of insolvency available for adjudication

against the insolvent shall prove for any debt or liability contracted by the insolvent subsequently to the date of his so having notice.

Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the insolvent is subject at the date of the order of adjudication, or to which he may become subject during the continuance of the insolvency by reason of any obligation incurred previously to the date of the order of adjudication, shall be deemed to be debts provable in insolvency, and may be proved in the prescribed manner before the trustee in the insolvency.

An estimate shall be made according to the rules of the Court for the time being in force, so far as the same may be applicable, and, where they are not applicable, at the discretion of the trustee, of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court, and the Court may, if it think the value of the debt or liability incapable of being fairly estimated, make an order to that effect, and upon such order being made such debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in insolvency.

But if the Court think that the value of the debt or liability is capable of being fairly estimated, it may direct such value to be assessed before the Court, or either before the Court itself or some other competent Court, and may give all necessary directions for such purpose, and the amount of such value when assessed shall be provable as a debt under the insolvency.

"Liability" shall for the purposes of this Act include any compensation for work or labour done,

any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether such breach does or does not occur, or is or is not likely to occur or capable of occurring before the close of the insolvency;

and generally it shall include any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of, money or money's worth, whether such payment be, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or assessable only as matter of opinion.

**33. The debts hereinafter mentioned shall be Preferential debts. paid in priority to all other debts.**

Between themselves, such debts shall rank equally and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves; that is to say,

(1.) All local rates due from him at the date of the order of adjudication, and having become due and payable within twelve months next before such time; all assessed taxes, land-tax, and income-tax assessed on him up to the first day of April next before the date of the order of ad-

judication, and not exceeding in the whole one year's assessment;

(2.) All wages or salary of any clerk or servant in the employment of the insolvent at the date of the order of adjudication, not exceeding four months' wages or salary, and not exceeding five hundred rupees; all wages of any labourer or workman in the employment of the insolvent at the date of the order of adjudication, and not exceeding two months' wages:

Save as aforesaid, all debts provable under the insolvency shall be paid *pari passu*.

**34. Where at the time of the presentation of the petition for adjudication Preferential claim in case of apprenticeship. any person is apprenticed or is an articled clerk to the insolvent, the order of adjudication shall, if either the insolvent or apprentice or clerk give notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement;**

and if any money has been paid by or on behalf of such apprentice or clerk to the insolvent as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as such trustee, subject to an appeal to the Court, thinks reasonable, out of the insolvent's property to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the insolvent under the indenture or articles before the commencement of the insolvency, and to the other circumstances of the case.

Where it appears expedient to a trustee he may, on the application of any apprentice or articled clerk to the insolvent, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

**35. The landlord or other person to whom any rent is due from the insolvent may at any time, either Power for landlord to distraint for rent. before or after the commencement of the insolvency, distraint upon the goods or effects of the insolvent for the rent due to him from the insolvent.**

If such distress for rent be levied after the commencement of the insolvency, it shall be available only for one year's rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the insolvent may prove under the insolvency for the overplus due for which the distress may not have been available.

**36. When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of such periods, the person entitled to such rent or payment may prove for a proportionate part thereof up to the day of the adjudication as if such rent or payment grew due from day to day.**

**37. Interest on any debt provable in insolvency may be allowed by the trustee under the same circumstances in which interest would have been allowable if a suit had been brought for such debt.**

**38.** If any insolvent is at the date of the order of adjudication liable in respect of distinct contracts as member of two or

more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts, against the properties respectively liable upon such contracts.

**39.** The trustee, with the consent of the creditors, testified by a resolution

Allowance to insolvent for maintenance or service.

passed in general meeting, may from time to time, during the continuance of the insolvency, make such allowance as may be approved by the creditors to the insolvent out of his property for the support of the insolvent and his family, or in consideration of his services if he is engaged in winding up his estate.

**40.** Where there have been mutual credits, mutual debts, or other mutual dealings between the insolvent and any other person proving or claiming to prove a debt under his insolvency, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of such account, and no more, shall be claimed or paid on either side respectively.

But a person shall not be entitled under this section to claim the benefit of any set-off against the property of an insolvent in any case where he had at the time of giving credit to the insolvent notice of an act of insolvency committed by such insolvent and available against him for adjudication.

**41.** A creditor holding a specific security on the property of the insolvent or on any part thereof, may, on giving up his security,

prove for his whole debt.

He shall also be entitled to a dividend in respect of the balance due to him after realizing or giving credit for the value of his security, in manner and at the time prescribed.

A creditor holding such security as aforesaid and not complying with the foregoing conditions shall be excluded from all share in any dividend.

#### Dividends.

**42.** The trustee shall from time to time, when the committee of inspection determines, declare a dividend amongst the creditors

Distribution of dividends.

who have proved to his satisfaction debts provable in insolvency, and shall distribute the same accordingly.

In the event of his not declaring a dividend for the space of six months, he shall summon a meeting of the creditors, and explain to them his reasons for not declaring the same.

**43.** In the calculation and distribution of a Provision for creditors residing at a distance, &c.

dividend it shall be obligatory on the trustee to make provision for debts provable

in insolvency appearing from the insolvent's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in insolvency, the subject of claims not yet determined.

**44.** Any creditor who has not proved his debt

Right of creditor who has not proved debt before declaration of any dividend or dividends shall be entitled to be paid out of dividend.

any monies for the time being in the hand of the trustee any dividend or dividends he may have failed to receive before such monies are made applicable to the payment of any future dividend or dividends;

but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

**45.** When the trustee has converted into Final dividend.

money all the property of the insolvent, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized without needlessly protracting the insolvency, he shall declare a final dividend, and give notice of the time at which it will be distributed.

**46.** The insolvent shall be entitled to any sur-

plus remaining after payment of his creditors, and of the costs, charges, and expenses of the insolvency.

**47.** No suit for a dividend shall lie against the trustee. But if the trustee

No suit for dividend.

refuses to pay any dividend, the Court may, if it thinks fit, order the trustee to pay the same, and also to pay out of his own monies interest thereon for the time that it is withheld, and the costs of the application.

#### PART II.

##### TERMINATION OF INSOLVENCY.

**48.** When the whole property of the insolvent has been realized for the benefit of his creditors, or

Close of insolvency.

so much thereof as can, in the joint opinion of the trustee and committee of inspection, be realized without needlessly protracting the insolvency,

or when a composition or arrangement has been completed,

the trustee shall make a report accordingly to the Court, and the Court, if satisfied that the whole of the property of the insolvent has been realized for the benefit of his creditors, or so much thereof as can be realized without needlessly protracting the insolvency, or that a composition or arrangement has been completed, shall make an order that the insolvency has closed, and the insolvency shall be deemed to have closed at and after the date of such order.

A copy of the order closing the insolvency may be published in the local official Gazette, and the production of a copy of such Gazette containing a copy of the order shall be conclusive evidence of the order having been made and of the date and contents thereof.

*Discharge of Insolvent.*

**49.** When an insolvency is closed, or at any time during its continuance, with the assent of the creditors testified by a special resolution, the insolvent may apply to the Court for an order of discharge.

Such discharge shall not be granted unless it is proved to the Court that one of the following conditions has been fulfilled, that is to say,

either that a dividend of not less than eight annas in the rupee has been paid out of his property, or might have been paid except through the negligence or fraud of the trustee,

or that a special resolution of the insolvent's creditors has been passed to the effect that his insolvency or the failure to pay eight annas in the rupee has, in their opinion, arisen from circumstances for which the insolvent cannot justly be held responsible, and that they desire that an order of discharge should be granted to him.

The Court may suspend for such time as it deems to be just, or withhold altogether, the order of discharge in the circumstances following; namely,

if it appears to the Court on the representation of the creditors made by special resolution, of the truth of which representation the Court is satisfied, or by other sufficient evidence, that the insolvent has made default in giving up to his creditors the property which he is required by this Act to give up;

or that a prosecution has been commenced against him in pursuance of the provisions for the time being in force relating to the punishment of fraudulent debtors, in respect of any offence alleged to have been committed by him against such provisions.

**50.** An order of discharge shall not release the insolvent from any debt or liability incurred by means of any fraud or breach of trust, nor from any debt or liability whereof he has obtained forbearance by any fraud.

But it shall release the insolvent from all other debts provable under the insolvency, with the exception of—

(1) debts due to the Secretary of State for India in Council :

(2) debts with which the insolvent stands charged at the suit of the said Secretary of State in Council or of any person for any offence against an Act relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail-bond entered into for the appearance of any person prosecuted for any such offence :

And he shall not be discharged from such excepted debts unless a Secretary to the Government of India certify in writing the consent of the Governor-General of India in Council to the insolvent's being discharged therefrom.

An order of discharge shall be sufficient evidence of the insolvency, and of the validity of the proceedings thereon; and in any proceedings instituted against an insolvent who has obtained an order of discharge in respect of any debt from which he is released by such order, the in-

solvent may state that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.

**51.** The order of discharge shall not release any person who, at the date of the order of adjudication, was a partner with the insolvent, or was jointly bound or had made any joint contract with him.

*Release of Trustee.*

**52.** When the insolvency is closed the trustee shall call a meeting of the creditors to consider an application to be made to the Court for his release.

At the meeting the trustee shall lay before the assembled creditors an account showing the manner in which the insolvency has been conducted, with a list of the unclaimed dividends, if any, and of the property, if any, outstanding, and shall inform the meeting that he proposes to apply to the Court for a release.

The creditors assembled at the meeting may express their opinion as to the conduct of the trustee, and they, or any of them, may appear before the Court and oppose the release of the trustee.

The Court, after hearing what, if anything, can be urged against the release of the trustee, shall grant or withhold the release accordingly, and if it withhold the release shall make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty, and shall suspend his release until such charging order has been complied with, and the Court thinks just to grant the release of the trustee.

**53.** Unclaimed dividends, and any other monies arising from the property of the insolvent, remaining under the control of the trustee at the close of the insolvency of any insolvent, or accruing thereafter, shall be accounted and paid over to such account as may be directed by the rules of Court to be made with the sanction of the Governor General in Council; and any parties entitled thereto may claim the same in manner directed by such rules.

The trustee shall also deliver a list of any outstanding property of the insolvent to the prescribed persons, and the same shall, when practicable, be got in and applied for the benefit of the creditors in manner prescribed.

**54.** The order of the Court releasing the trustee of an insolvency shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the insolvent, or otherwise in relation to his conduct as trustee of such insolvent.

Such order may be revoked by the Court on proof that it was obtained by fraud.

*Status of undischarged Insolvent.*

**55.** Where a person who has been made insolvent has not obtained his discharge, then, from and after the close of his insolvency, the following consequences shall ensue :—

(1) No portion of a debt provable under the insolvency shall be enforced against the

property of the person so made insolvent until the expiration of three years from the close of the insolvency; and during that time, if he pay to his creditors such additional sum as will, with the dividend paid out of his property during the insolvency, make up eight annas in the rupee, he shall be entitled to an order of discharge in the same manner as if a dividend of eight annas in the rupee had originally been paid out of his property:

- (2.) At the expiration of a period of three years from the close of the insolvency, if the debtor made insolvent has not obtained an order of discharge, any balance remaining unpaid in respect of any debt proved in such insolvency (but without interest in the meantime,) shall be deemed to be a subsisting debt in the nature of a judgment debt, and, subject to the rights of any persons who have become creditors of the debtor since the close of his insolvency, may be enforced against any property of the debtor, with the sanction of the Court which adjudicated such debtor an insolvent, or of the Court having jurisdiction in insolvency in the place where the property is situated, but to the extent only, and at the time and in manner, directed by such Court, and after giving such notice and doing such acts as may be prescribed in that behalf.

#### *Audit.*

56. The trustee, having had his quarterly statement of accounts audit-

Appointment of comptroller. ed by the committee of inspection, shall, within the prescribed time, forward the certified statement in the prescribed form to an officer to be called the comptroller in insolvency, and if he fail to do so he shall be deemed guilty of an offence under the Indian Penal Code, section 176, and be punishable accordingly.

There shall be three such comptrollers, whose titles and jurisdictions shall be as follows:—

(1) the Comptroller in Insolvency of Bengal, whose jurisdiction shall extend to the territories for the time being respectively under the governments of the Lieutenant Governors of Bengal, the North-Western Provinces, and the administrations of the Chief Commissioners of Oudh, the Central Provinces and British Burma:

(2) the Comptroller in Insolvency of Madras, whose jurisdiction shall extend to the territories for the time being under the government of the Governor of Fort St. George in Council, to Coorg, and (so far as regards British subjects) to Mysore, and

(3). the Comptroller in Insolvency of Bombay, whose jurisdiction shall extend to the territories for the time being under the government of the Governor of Bombay in Council, and also (so far as regards British subjects) to the Hyderabad Assigned Districts.

The first Comptrollers in Insolvency under this Act shall be respectively the present Official Assignees of the Courts for the relief of insolvent

debtors holden under the said statute of the eleventh and twelfth of Victoria, chapter twenty-one, in Calcutta, Madras and Bombay.

The subsequent comptrollers shall be appointed, and the first and any subsequent comptrollers may be removed, in the case of the Comptroller in Insolvency of Bengal, by the Governor General in Council, and in the cases of the other Comptrollers in Insolvency, by the Local Government, and shall be paid such salary as the Governor General of India in Council may direct.

Each comptroller shall be provided with such office, and with such clerks and servants, as may be directed by the Local Government with the approval of the Governor General in Council.

The clerks and servants in the office of the comptroller shall be appointed and dismissible by each comptroller, and there shall be allowed and paid to him such sum as the Governor General in Council may from time to time direct for the expenses of his office, and of such clerks and other persons as may be deemed necessary by the Governor General in Council.

57. Every trustee of an insolvent shall from time to time, as may Return of accounts to be prescribed, and not less than once in every year comptroller. during the insolvency, transmit to the comptroller within whose jurisdiction he is a statement showing the proceedings in such insolvency up to the date of the statement containing the prescribed particulars, and made out in the prescribed form;

and any trustee failing to transmit accounts in compliance with this section shall be deemed guilty of an offence under the Indian Penal Code, section 176, and be punishable accordingly.

58. The comptroller shall examine the statements transmitted to him Duty of comptroller. and shall call the trustee to account for any misfeasance, neglect, or omission which may appear on such statements, and may require the trustee to make good any loss the estate of the insolvent may have sustained by such misfeasance, neglect, or omission.

If the trustee fail to comply with such requisition of the comptroller, the comptroller may report the same to the Court; and the Court, after hearing the explanation, if any, of the trustee, shall make such order in the premises as it thinks just.

59. The comptroller may at any time require Powers of comptroller. any trustee to answer any inquiry made by him in relation to any insolvency in which such trustee is engaged, and may, if he think fit, apply to the Court to examine on oath such trustee or any other person concerning such insolvency;

he may also direct a local investigation to be made of the books and vouchers of the trustees.

### PART III. CONSTITUTION AND POWERS OF COURT.

#### *Description of Court.*

60. From and after the commencement of this Act the following provisions Court to consist of High Court and District Courts. shall take effect with respect to the Courts having jurisdiction in insolvency and their officers; that is to say,

If the person sought to be adjudged an insolvent reside or carry on business within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay, or within the limits of the towns of Allahabad or Lahore, then "the Court" shall mean, for the purposes of this Act, the High Court or the Chief Court of the Panjab, as the case may be, and is hereinafter referred to as the Chief Insolvency Court :

If the person sought to be adjudged an insolvent do not reside or carry on business within such limits, then "the Court" shall, subject to the provisions hereinafter contained for removing the proceedings, mean the Court of the District Judge within whose jurisdiction such person resides or carries on business, and is hereinafter referred to as the Local Insolvency Court.

In the former part of this section "District Judge" means, in the Regulation Provinces, a Judge of a principal Civil Court of original jurisdiction, in the Non-Regulation Provinces, other than British Burma and Sindh, a Commissioner of Division, in Pegu, the Recorder at Rangoon, in Arakan, the Recorder at Rangoon, until a Recorder's Court is established at Akyab, and thenceforward the Recorder at Akyab, in the Tenasserim Provinces, the Recorder at Maulmain, and in Sindh, the Judicial Commissioner in that Province.

Every Chief Insolvency Court shall be holden once a month at least throughout the year by any one Judge of the said High Courts and Chief Court, respectively.

**61.** Subject to the provisions in this Act with respect to the officers of the existing Courts for the Relief of Insolvent Debtors at Calcutta, Madras and Bombay, the registrars, clerks, and other subordinate officers of the Chief Insolvency Courts shall be appointed by the Chief Justice or Senior Judge for the time being, and may be removed by him and others appointed in their stead if he is of opinion that they are negligent, unskilful, or untrustworthy in the performance of their duties, or ought, in his opinion, to be removed for any other just cause.

**62.** Subject as aforesaid, there shall be paid to the registrars, clerks, and other subordinate officers such salaries as the Local Government with the sanction of the Governor General of India in Council may determine.

**63.** Subject as aforesaid, the registrars, clerks, and other subordinate officers of the Chief Insolvency Court shall perform such duties as may from time to time be assigned to them by the Chief Justice.

**64.** Every Judge holding a Chief Insolvency Court shall have all the powers, jurisdiction, and privileges possessed by any Judge of a High Court, and the orders of such Judge shall be of the same force as if they were decrees of such High Court.

**65.** Every Judge of a Local Court of Insolvency shall, for the purposes of this Act, in addition to his ordinary powers as a District Court Judge, have all the powers and jurisdiction of a Judge of a High Court, and the orders of such Judge may be enforced accordingly in manner prescribed.

**66.** Every Judge of a Chief and of a Local Court of Insolvency may, delegate authority to subject and in accordance with the rules of Court for the time being in force, delegate to the registrar or to any other officer of his Court such of the powers vested in him by this Act as it may be expedient for the Judge to delegate to him.

**67.** The Chief Justice or (in the case of the Chief Court of the Panjab) the Senior Judge, shall, with the sanction of the Governor General of India in Council, from time to time prescribe a scale of fees to be charged for any business done by any Court or officer thereof under this Act; and the Governor General in Council shall direct whether the same shall be imposed by stamps or otherwise, and by whom and in what manner the same shall be collected, accounted for, and appropriated, and whether any and what remuneration shall be allowed to any person performing any duties under this Act.

**68.** No registrar or officer of any Court having jurisdiction in insolvency in insolvency not to act as attorneys or vakils in Courts in which they hold office, shall, during his continuance in office, either directly or indirectly, by himself or partner, act as an attorney or vakil in any proceeding in any insolvency in any Court of which he is registrar or officer, or in any appeal from such Court, or in any prosecution of an insolvent by order of such Court, under pain of dismissal by the Judge; and such dismissal shall be in writing, stating the reasons for the same; and a copy thereof shall be sent to the Chief Justice, who, if he see fit, may reinstate such registrar or officer.

**69.** Every advocate, attorney, and vakil of a High Court shall be, and may practise in any Insolvency Court. Court of Insolvency, and if any person not being such advocate, attorney, or vakil practises in the Court of Insolvency as advocate, attorney, or vakil, he shall be deemed guilty of a contempt of the Court.

**70.** Every Court having jurisdiction in insolvency under this Act may review, rescind, or vary any order made by it in pursuance of this Act.

Any person aggrieved by any order of a Local Insolvency Court in respect of a matter of fact or of law made in pursuance of this Act, may appeal to the Chief Insolvency Court, and it shall be lawful for such Court to alter, reverse, or confirm such order as it thinks just.

All orders made by the Chief Insolvency Court in respect of matters brought before it on appeal shall be final, unless such Court gives leave to appeal to the Judicial Committee of the Privy Council.

For the purpose of this section 'Chief Insolvency Court' shall, in British Burma, mean the Chief Insolvency Court held at Fort William,

and in any other Non-Regulation province (except the Panjab) the Chief Insolvency Court held where the High Court is established to whose original criminal jurisdiction the insolvent is for the time being subject, or would be subject if he were an European British subject of Her Majesty.

**71.** Subject to the provisions of this Act, every Court having jurisdiction in insolvency under this Act shall have full power to

decide all questions of priorities, and all other questions whatsoever, whether of law or fact, arising in any case of insolvency coming within the cognizance of such Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case;

and no such Court as aforesaid shall be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor shall any appeal lie from its decisions, except in manner directed by this Act.

#### *Orders and Warrants of Court.*

**72.** Any order made by a Court having jurisdiction in insolvency in any part of British India under this Act, shall be enforced in any other part of British India in the Courts having jurisdiction in insolvency in such parts, in the same manner in all respects as if such order had been made by the Courts which are hereby required to enforce the same.

**73.** The Chief Insolvency Court and the Local Insolvency Courts, and the officers of such Courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of the Court seeking aid, together with a request to another of the said Courts, shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by such order, the like jurisdiction which the Court which made the request, as well as the Court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

**74.** Any Court having jurisdiction in insolvency in any part of British India under this Act may, if it thinks fit, order that a person named in the order being in any other part of British India shall be examined there.

**75.** Any warrant of a Court having jurisdiction in insolvency in any part of British India under this Act may be enforced in any other part of British India, in the same manner in which a warrant issued under the Code of Criminal Procedure may be executed; and any search-warrant issued by a Court having jurisdiction in insolvency under this Act for the discovery of any property of an insolvent may be executed in manner prescribed, or in

the same manner and subject to the same privileges in and subject to which a search-warrant for property supposed to be stolen may be executed according to law.

**76.** Where any Court having jurisdiction in Commitment to prison. commits any person to prison, the commitment may be to such convenient prison as the Court thinks expedient, and if the gaoler of any prison refuses to receive any prisoner so committed he shall be liable for every such refusal to a penalty not exceeding one thousand rupees.

#### *General Rules.*

**77.** The Chief Justice or (in the case of the Chief Court of the Panjab) the Senior Judge may from time to time make, and may from time to time revoke and alter, general rules, in this Act described as rules of Court, for the effectual execution of this Act and of the objects thereof, and the regulation of the practice and procedure of insolvency petitions and the proceedings thereon.

Any general rules made as aforesaid may prescribe regulations as to the following matters:—

the service of insolvency petitions, including provisions for substituted service;

the valuing of any debts provable in an insolvency;

the valuation of securities held by creditors; the giving or withholding interest or discount on or in respect of debts or dividends;

the funds out of which costs are to be paid, the order of payment, and the amount and taxation thereof;

and as to any other matter or thing, whether similar or not to those above enumerated, in respect to which it may be expedient to make rules for carrying into effect the objects of this Act.

All rules so made shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act.

All rules made in pursuance of this section shall be laid before the Governor General in Council within three weeks after they are made, and all rules so made shall be judicially noticed.

Until rules have been made in pursuance of this Act, and so far as such rules do not extend, the principles, practice, and rules on which Courts having jurisdiction in insolvency have heretofore acted in dealing with insolvency proceedings shall be observed by any Court having jurisdiction in insolvency cases under this Act.

## PART IV.

#### SUPPLEMENTAL PROVISIONS.

##### *As to Proceedings.*

**78.** The following regulations shall be made with respect to proceedings in insolvency; namely,

- (1.) Every insolvency petition shall be accompanied by an affidavit of the petitioner in the prescribed form, verifying the statements contained in such petition:

- (2.) Where two or more insolvency petitions are presented against the same debtor or against debtors being members of the same partnership, the Court may consolidate the proceedings, or any of them, upon such terms as the Court thinks fit :
- (3.) Where proceedings against the debtor are instituted in more Courts than one, the Chief Insolvency Court may, on the application of any creditor, direct the transfer of such proceedings to such Court or to any Local Insolvency Court :
- (4.) Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor :
- (5.) Where the creditors resolve by a special resolution that it will be more convenient that the proceedings in any Local Insolvency Court should be transferred to the Chief Insolvency Court or to some other local Court, or where the judge of a local Court certifies that in his opinion the insolvency would be more advantageously conducted in the Chief Insolvency Court or in some other local Court, and the creditors do not by resolution object to the transfer, the petition shall be transferred to and all subsequent proceedings thereon had in the Chief Insolvency Court or such other local Court :
- (6.) Subject to the provisions of this Act, every Court having original jurisdiction in insolvency shall be deemed to be the same Court, and to have jurisdiction throughout British India; and cases may be transferred from one Court to another in such manner as may be prescribed :
- (7.) A corporation may prove a debt, vote, and otherwise act in insolvency, by an agent duly authorized under the seal of the corporation :
- (8.) A creditor may, in the prescribed manner, by instrument in writing, appoint a person to represent him in all matters relating to any debtor or his affairs in which a creditor is concerned in pursuance of this Act, and such representative shall thereupon, for all the purposes of this Act, stand in the same position as the creditor who appointed him :
- (9.) When a debtor who has been adjudicated an insolvent dies, the Court may order that the proceedings in the matter be continued as if he were alive :
- (10.) The Court may, at any time, on proof to its satisfaction that proceedings in insolvency ought to be stayed, by reason that negotiations are pending for the liquidation of the affairs of the insolvent by arrangement, or for the acceptance of a composition by the creditors in pursuance of the provisions hereinafter contained, or on proof to its satisfaction of any other sufficient reason for staying the same, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

**79.** Whenever any adjudication in insolvency is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the trustee or any person acting under his authority, or by the Court, shall be valid; but the property of the debtor who was adjudged an insolvent shall in such case vest in such person as the Court may appoint, or, in default of any such appointment, revert to the insolvent for all his estate or interest therein, upon such terms and subject to such conditions, if any, as the Court declares by order.

A copy of the order of the Court annulling the adjudication of a debtor as an insolvent shall be forthwith published in the local official Gazette and advertised locally in the prescribed manner, and the production of a copy of the Gazette containing such order shall be conclusive evidence of the fact of the adjudication having been annulled, and of the terms of the order annulling the same.

**80.** No proceeding in insolvency shall be invalidated by any formal defect in the proceedings. Formal defects not to invalidate proceedings, or by any irregularity, unless the Court before which an objection is made to such proceeding is of opinion that substantial injustice has been caused by such defect or irregularity, and that such injustice cannot be remedied by any order of such Court.

*As to Trustees and Committee of Inspection.*

**81.** The following regulations shall be made with respect to the trustee and committee of inspection :

- Regulations as to trustees, &c.**
- (1.) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and where more than one are appointed they shall declare whether any act required or authorized to be done by the trustee is to be done by all or any one or more of such persons; but all such persons are in this Act included under the term "trustee," and shall be joint tenants of the property of the insolvent. The creditors may also appoint persons to act as trustees in succession, in the event of one or more of the persons first named declining to accept the office of trustee :
- (2.) If any vacancy occur in the office of trustee by death, resignation, or otherwise, the creditors in general meeting shall fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing trustee, if there be more than one, or by the registrar on the requisition of any creditor :
- (3.) If, through any cause whatever, there is no trustee acting during the continuance of an insolvency, the registrar of the Court for the time being having jurisdiction in the insolvency shall act as such trustee :
- (4.) The Court may, upon cause shown, remove any trustee. The creditors may by special resolution at a meeting specially called for that purpose, of which seven days' notice has been given, remove the trustee and appoint another

- person to fill his office, and the Court shall give a certificate declaring him to be the trustee :
- (5.) If a trustee be adjudged insolvent, he shall cease to be trustee, and the registrar shall, if there be no other trustee, call a meeting of creditors for the appointment of another trustee in his place :
- (6.) The property of the insolvent shall pass from trustee to trustee, including under that term the registrar when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever :
- (7.) The trustee of an insolvent may sue and be sued by the official name of "the trustee of the property of an insolvent," inserting the name of the insolvent, and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding upon himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office :
- (8.) The certificate of appointment of a trustee shall, for the purposes of the Indian Registration Act, be deemed to be a conveyance or assignment of property, and may be registered accordingly :
- (9.) All acts and things by this Act authorized or required to be done by or to the registrar may be done within the district of each Court having jurisdiction in insolvency by or to the registrar of that Court :
- (10.) Any member of the committee of inspection may resign his office by notice in writing signed by him and delivered to the trustee :
- (11.) The creditors may by resolution fix the quorum required to be present at a meeting of the committee of inspection :
- (12.) Any member of the committee of inspection may also be removed by a special resolution at any meeting of creditors of which the prescribed notice has been given, stating the object of the meeting :
- (13.) On any vacancy occurring in the office of a member of the committee of inspection by removal, death, resignation, or otherwise, the trustee shall convene a meeting of creditors for the purpose of filling up such vacancy :
- (14.) The continuing members of the committee of inspection may act, notwithstanding any vacancy in their body ; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it does not exceed five :
- (15.) No defect or irregularity in the election of a trustee or of a member of the committee of inspection shall vitiate any act *bonâ fide* done by him ; and no act or proceeding of the trustee or of the creditors shall be invalid by reason of any failure of the creditors to elect all or any members of the committee of inspection :
- (16.) If a member of the committee of inspection become an insolvent his office shall thereupon become vacant :
- (17.) Where there is no committee of inspection, any act or thing or any direction or consent by this Act authorized or required to be done or given by such committee may be done or given by the Court on the application of the trustee.
- 82.** The registrar may adjourn the first meeting of creditors from time to time and from place to place, subject to the directions of the Court ; but if, at such first meeting of creditors or at some adjournment thereof, no trustee is appointed by reason of the prescribed quorum not being present, or for any other reason whatever, the Court may annul the adjudication, unless it deems it expedient to carry on the insolvency with the aid of the registrar as trustee.
- Moreover, if at any time during the insolvency no new trustee is appointed to fill a vacancy in that office, the Court may either carry on the insolvency with the aid of the registrar as trustee or annul the order of adjudication as it thinks just.
- As to Power over Insolvent.*
- 83.** The Court, upon the application of the trustee, may from time to time order that, for such time as the Court thinks fit, not exceeding three months from the date of the order of adjudication, post letters addressed to the insolvent at any place or any of the places mentioned in the order, shall be re-directed, sent, or delivered by the Director General of the Post Office or the officers acting under him to the trustee or otherwise as the Court directs, and the same shall be done accordingly.
- 84.** The Court may, by warrant addressed to any constable or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, monies, goods, and moveable property in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Court orders, under the following circumstances :—
- (1.) If, after a petition of insolvency is presented against such debtor, it appears to the Court that there is probable reason for believing that he is about to go abroad or to quit his place of residence with a view of avoiding service of the petition, or of avoiding appearing to the petition, or of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings in insolvency :
- (2.) If, after a petition in insolvency has been presented against such debtor, it appears to the Court that there is probable

cause for believing that he is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of by the trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or chattels, or any books, documents, or writings which might be of use to his creditors in the course of his insolvency :

- (3.) If, after the service of the petition on such debtor, or after an adjudication in insolvency against him, he removes any goods or chattels in his possession above the value of fifty rupees, without the leave of the trustee, or if, without good cause shown, he fails to attend any examination ordered by the Court.

*As to Property devolving on Trustee.*

85. Where the goods of any trader have been taken in execution in respect of a decree for a sum exceeding five hundred rupees and sold, the sheriff, in the case of a sale under the direction of the High Court at Fort William, Madras, or Bombay, and in the case of a sale under the direction of any other Court, the proper officer of such Court, shall retain the proceeds of such sale in his hands for a period of fourteen days, and upon notice being served on him within that period of an insolvency petition having been presented against such trader, shall hold the proceeds of such sale, after deducting expenses, on trust to pay the same to the trustee.

But if no notice of such petition having been presented be served on him within such period of fourteen days, or if, such notice having been served, the trader against whom the petition has been presented is not adjudged an insolvent on such petition, or on any other petition of which the sheriff or other officer has notice, he may deal with the proceeds of such sale in the same manner as he would have done had no notice of the presentation of an insolvency petition been served on him.

86. Where an insolvent is or has been an officer of the army or navy, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, or is in the enjoyment of any pension or compensation granted by Government, the trustee during the insolvency, and the registrar after the close of the insolvency, shall receive for distribution amongst the creditors so much of the insolvent's pay, half pay, salary, emolument, or pension as the Court, upon the application of the trustee, thinks just and reasonable, to be paid in such manner and at such times as the Court, with the consent in writing of the chief officer of the Department under which the pay, half pay, salary, emolument, pension, or compensation is enjoyed, directs.

87. Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court upon the application of the trustee shall from time to time make such order as it thinks just for the payment of such salary or income, or of any part thereof, to the trustee

during the insolvency, and to the registrar if necessary after the close of the insolvency, to be applied by him in such manner as the Court directs.

88. Any settlement of property not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes insolvent within two years after the date of such settlement, be void as against the trustee of the insolvent appointed under this Act,

and shall, if the settlor becomes insolvent at any subsequent time within ten years after the date of such settlement, unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement, be void against such trustee.

Any covenant or contract made by any person, in consideration of marriage, for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, upon his becoming insolvent before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee appointed under this Act.

"Settlement" shall for the purposes of this section include any conveyance or transfer of property.

89. Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own monies in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same become insolvent within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee of the insolvent appointed under this Act;

but this section shall not affect the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration.

90. Every treasurer or other officer, or any banker, attorney, or agent of an insolvent, shall pay and deliver to the trustee all monies and securities in his possession or power, as such officer or agent, if he be not by law entitled to retain as against the insolvent or the trustee; if he do not, he shall be guilty of an offence under the Indian Penal Code, section 187, and may be punished accordingly on the application of the trustee.

Protection of certain transactions with insolvent. Nothing in this Act contained shall render invalid—

- (1.) Any payment made in good faith and for value received to any insolvent before the

date of the order of adjudication by a person not having at the time of such payment notice of any act of insolvency committed by the insolvent, and available against him for adjudication :

- (2.) Any payment or delivery of money or goods belonging to an insolvent, made to such insolvent by a depositary of such money or goods before the date of the order of adjudication, who had not at the time of such payment or delivery notice of any act of insolvency committed by the insolvent, and available against him for adjudication :
- (3.) Any contract or dealing with any insolvent made in good faith and for valuable consideration, before the date of the order of adjudication, by a person not having at the time of making such contract or dealing notice of any act of insolvency committed by the insolvent, and available against him for adjudication.

**92. Subject and without prejudice to the provisions of this Act relating**

Protection of certain transactions entered into by or in relation to the property of the insolvent.

and avoiding, on the ground of their constituting fraudulent preferences, certain conveyances, charges, payments, and judicial proceedings, the following transactions by and in relation to the property of an insolvent shall be valid, notwithstanding any prior act of insolvency,—

- (1.) Any disposition or contract with respect to the disposition of property by conveyance, transfer, charge, delivery of goods, payment of money, or otherwise, howsoever made by any insolvent in good faith and for valuable consideration, before the date of the order of adjudication, with any person not having at the time of the making of such disposition of property notice of any act of insolvency committed by the insolvent, and available against him for adjudication :
- (2.) Any execution or attachment against the land of the insolvent, executed in good faith by seizure before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not at the time of the same being so executed by seizure notice of any act of insolvency committed by the insolvent, and available against him for adjudication :
- (3.) Any execution or attachment against the goods of any insolvent, executed in good faith by seizure and sale before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not at the time of the same being executed by seizure and sale notice of any act of insolvency committed by the insolvent, and available against him for adjudication.

*As to Discovery of Insolvent's Property.*

**93. The Court may, on the application of the**

Power of Court to summon persons before it suspected of having property of insolvent. insolvent or his wife,

or any person whatever known or suspected to have in his possession any of the estate or effects belonging to the insolvent, or supposed to be indebted to the insolvent,

or any person whom the Court deems capable of giving information respecting the insolvent, his trade, dealings or property,

and the Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property.

If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce such documents, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant addressed as aforesaid, cause such person to be apprehended and brought up for examination.

**94. The Court may examine upon oath, either Examination of parties by word of mouth or by by Court.** written interrogatories, any person so brought before it in manner aforesaid concerning the insolvent, his dealings or property.

**95. If any person on examination before the Order of Court for payment of amount admitted on examination.** Court admit that he is indebted to the insolvent, the Court may, on the application of the trustee, order him to pay to the trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.

**96. Any person acting under warrant of the Seizure of property of insolvent.** Court may seize any property of the insolvent divisible amongst his creditors under this Act, and in the insolvent's custody or possession, or in that of any other person ;

and with a view to such seizure may break open any house, building, or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be.

Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any constable or prescribed officer of the Court, who may execute the same according to the tenor thereof.

*Joint and separate Estates.*

**97. Any creditor whose debt is sufficient to entitle him to present an insolvent petition against one partner.** Power to present petition against all the partners of a firm may present such petition against any one or more partners of such firm without including the others.

**98. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.** Power to dismiss petition against some respondents only.

**99. Where one member of a partnership has been adjudicated an insolvent, any other petition for adjudication against a mem-** Property of partners to be vested in same trustee.

ber of the same partnership shall be filed in or transferred to the Court in which the first-mentioned petition is in course of prosecution,

and, unless the Court otherwise directs, the property of such last-mentioned member shall vest in the trustee appointed in respect of the property of the first-mentioned member of the partnership,

and the Court may give such directions for amalgamating the proceedings in respect of the properties of the members of the same partnership as it thinks just.

**100. If one partner of a firm is adjudged**

Joint creditor may prove for purpose of voting whom the insolvent is indebted jointly with the other

partners of the firm or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat, but shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

**101. Where joint and separate properties are**

Joint and separate being administered, dividends of the joint and sepa-

rate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together.

The expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

**102. Where a member of a partnership is ad-**

Suits by trustee and insolvency's partners. may authorize the trustee, with consent of the creditors,

certified by a special resolution, to commence and prosecute any suit in the names of the trustee and of the insolvent partner; and any release by such partner of the debt or demand to which the action or suit relates shall be void.

But notice of the application for authority to commence the suit shall be given to such partner, and he may show cause against it, and on his application, the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the suit, and if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the Court directs.

*Evidence.*

**103. The registrar, or any other person presid-**

Evidence of proceedings at meeting of creditors. ing at a meeting of creditors under this Act, shall cause minutes to be kept and duly entered in a book of all resolutions and proceedings of such meeting.

Any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, shall be received as evidence in all legal proceedings;

and, until the contrary is proved, every general meeting of the creditors in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had.

Evidence of proceedings in insolvency.

**104. Any petition or copy of a petition in insol-**

vency, any order or copy of an order made by any Court having jurisdiction in insolvency,

any certificate or copy of a certificate made by any Court having jurisdiction in insolvency,

any deed or copy of a deed of arrangement in insolvency,

and any other instrument or copy of an instrument, affidavit, or document made or used in the course of any insolvency proceedings, or other proceedings had under this Act,

may, if any such instrument as aforesaid or copy of an instrument appears to be sealed with the seal of any Court having jurisdiction, or purports to be signed by any Judge having jurisdiction in insolvency under this Act, be receivable in evidence in all legal proceedings whatever.

**105. In case of the death of the insolvent or**

Death of witness. his wife, or of a witness whose evidence has been re-

ceived by any Court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposited to.

**106. Every Court having jurisdiction in insol-**

Insolvency Courts to have seals. vency under this Act shall have a seal describing such

Court in such manner as may be directed by order of the Chief Justice, and judicial notice shall be taken of such seal, and of the signature of the Judge or registrar of any such Court, in all legal proceedings.

*Miscellaneous.*

**107. Where a registrar under the authority of**

Expenses of registrar attending meetings, &c. this Act attends at any place for the purpose of presiding

at a meeting of creditors, or of receiving proofs, or of otherwise acting under this Act, his travelling and incidental expenses incurred in so doing, and those of any clerk or officer attending him, shall, after being settled by the Court, be paid out of the insolvent's property, if sufficient, and otherwise shall be deemed part of the expenses of the Court.

**108. Any person to whom anything in action**

Power of assignee to sue. belonging to the insolvent is assigned in pursuance of this Act may bring or defend

any suit relating to such thing in action in his own name.

**109. Where an insolvent is a contractor in**

Saving as to joint contracts. respect of any contract jointly with any other person or persons, such person or persons may sue or be sued in respect of such contract without the joinder of the insolvent.

**110. Every deed, conveyance, assignment or**

Exemption of deeds, &c., from stamp-duty. other assurance relating solely to immoveable property, or to any mortgage, charge, or other incumbrance on, or any estate, right, or interest in, any moveable or immoveable property which is part of the estate of any insol-

vent, and which after the execution of such deed, conveyance, assignment or other assurance, is or remains the estate of the insolvent or of the trustee under the insolvency, and every power-of-attorney, proxy-paper, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any insolvent or to any proceeding under any insolvency, shall be exempt from stamp-duty (except in respect of fees under this Act).

**111.** Where by this Act any limited time from computation of time, or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then, in the computation of such limited time, the same shall be taken as exclusive of the day of such date or of the happening of such event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of such limited time according to such computation, unless such last day is a Sunday, Christmas Day, Good Friday, or a day on which, in pursuance of a notification by the Chief Justice under this Act, the Court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

Where by this Act any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be one of the days in this section specified, such act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

**112.** The registrars and other officers of the Courts acting in insolvency Returns by insolvency officer shall make to the Local Government such returns of the business of their respective Courts and offices, at such times and in such manner and form as may be prescribed by the rules of Court, and from such returns such officer as the Local Government shall from time to time appoint shall, in manner prescribed by the rules of Court, frame books (which shall be, under the regulations of the rules of Court, open for public information and searches), and also a general annual report to the Government of India, judicial and financial, respecting all matters within this Act.

**113.** Where any dividends remain unclaimed for five years, then and in after five years' non-claim. every such case the same shall be deemed vested in the Secretary of State for India in Council, and shall be disposed of as the Governor General of India in Council directs.

**114.** Where an insolvent is a trustee within the Removal of insolvent from trusteeship. Indian Trustee Act, 1866, section thirty-five of that Act shall have effect so as to authorize the Court to appoint a new trustee in substitution for the insolvent (whether voluntarily resigning or not), if it appears to the Court expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

**PART V.**  
**LIQUIDATION BY ARRANGEMENT.**  
*Regulations.*

**115.** The following regulations are prescribed with respect to the liquidation by arrangement of the affairs of the debtor:

- (1.) A debtor unable to pay his debts may summon a general meeting of his creditors, and such meeting may, by a special resolution as defined by this Act, declare that the affairs of the debtor are to be liquidated by arrangement and not in insolvency, and may at that or some subsequent meeting, held at an interval of not more than a week, appoint a trustee, with or without a committee of inspection.
- (2.) All the provisions of this Act relating to a first meeting of creditors, and to subsequent meetings of creditors in the case of an insolvency, including the description of creditors entitled to vote at such meetings, and the debts in respect of which they are entitled to vote, shall apply respectively to the first meeting of creditors, and to subsequent meetings of creditors, for the purposes of this section, subject to the following modifications:
  - (a.) Every such meeting shall be presided over by such chairman as the meeting may elect; and
  - (b.) No creditor shall be entitled to vote until he has proved by oath a debt provable in insolvency to be due to him, and the amount of such debt, with any prescribed particulars; and any person wilfully making a false oath in relation to such debt shall be deemed guilty of the offence of giving false evidence in a judicial proceeding:
- (3.) The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the meeting at which the special resolution is passed, and shall answer any inquiries made of him, and he, or, if he is so prevented from being at such meeting, some one on his behalf, shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom his debts are due:
- (4.) The special resolution, together with the statement of the assets and debts of the debtor, and the name of the trustee appointed, and of the members, if any, of the committee of inspection, shall be presented to the registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section; but if satisfied that it was so passed, and that a trustee has been appointed with or without a committee of inspection, he shall forthwith register the resolution and the statement of the assets and debts of the debtor, and such resolution and statement shall be open for inspection on the

- prescribed conditions, and the liquidation by arrangement shall be deemed to have commenced as from the date of the appointment of the trustee:
- (5.) All such property of the debtor as would, if he were made insolvent, be divisible amongst his creditors shall, from and after the date of the appointment of a trustee, vest in such trustee under a liquidation by arrangement, and be divisible amongst the creditors, and all such settlements, conveyances, transfers, charges, payments, obligations, and proceedings as would be void against the trustee in the case of an insolvency shall be void against the trustee in the case of liquidation by arrangement.
- (6.) The certificate of the registrar in respect of the appointment of any trustee in the case of a liquidation by arrangement shall be of the same effect as a certificate of the Court to the like effect in the case of an insolvency:
- (7.) The trustee under a liquidation shall have the same powers, and perform the same duties, as a trustee under an insolvency, and the property of the debtor shall be distributed in the same manner as in an insolvency;
- and with the modification hereinafter mentioned all the provisions of this Act shall, so far as the same are applicable, apply to the case of a liquidation by arrangement in the same manner as if the word "insolvent" included a debtor whose affairs are under liquidation, and the word "insolvency" included liquidation by arrangement;
- and in construing such provisions, the appointment of a trustee under a liquidation shall, according to circumstances, be deemed to be equivalent to and a substitute for the presentation of a petition in insolvency, or the service of such petition or an order of adjudication in insolvency:
- (8.) The creditors at their first or any general meeting may prescribe the Bank into which the trustee is to pay any monies received by him, and the sum which he may retain in his hands:
- (9.) The provisions of this Act with respect to the close of the insolvency, discharge of an insolvent, to the release of the trustee, and to the audit of accounts by the comptroller shall not apply in the case of a debtor whose affairs are under liquidation by arrangement.
- But the close of the liquidation may be fixed, and the discharge of the debtor and the release of the trustee may be granted, by a special resolution of the creditors in general meeting, and the accounts may be audited in pursuance of such resolution, at such time and in such manner and upon such terms and conditions as the creditors think fit:
- (10.) The trustee shall report to the registrar the discharge of the debtor, and a certificate of such discharge given by the registrar shall have the same effect as an order of discharge given to an insolvent under this Act:
- (11.) Rules of Court may be made in relation to proceedings on the occasion of liquidation by arrangement in the same manner and to the same extent and of the same authority as in respect of proceedings in insolvency:
- (12.) If it appear to the Court on satisfactory evidence that the liquidation by arrangement cannot, in consequence of legal difficulties, or of there being no trustee for the time being, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor an insolvent, and proceedings may be had accordingly:
- (13.) Where no committee of inspection is appointed, the trustee may act on his own discretion in cases where he would otherwise have been bound to refer to such committee:
- (14.) In calculating a majority on a special resolution for the purposes of this section, creditors whose debts amount to sums not exceeding one hundred rupees shall be reckoned in the majority in value, but not in the majority in number.

#### PART VI. COMPOSITION WITH CREDITORS.

##### *Regulations.*

**116.** The creditors of a debtor unable to pay his debts may, without any proceedings in insolvency, by an extraordinary resolution, resolve that a composition shall be accepted in satisfaction of the debts due to them from the debtor.

**117.** An extraordinary resolution of creditors Extraordinary resolu- shall be a resolution which tion defined. has been passed by a major- ity in number and three-fourths in value of the creditors of the debtor, assembled at a general meeting to be held in the manner prescribed, of which notice has been given in the prescribed manner, and has been confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting, of which notice has been given in the prescribed manner, and held at an interval of not less than seven days nor more than fourteen days from the date of the meeting at which such resolution was first passed.

**118.** In calculating a majority for the purposes of a composition under ed. Majority how calculat- this Part, creditors whose debts amount to sums not exceeding one hundred rupees shall be reckoned in the majority in value, but not in the majority in number, and the value of the debts of secured creditors shall, as nearly as circumstances admit, be estimated in the same way, and the same description of creditors shall be entitled to vote at such general meetings as in insolvency.

**119.** The debtor, unless prevented by sickness Debtor to be present. or other cause satisfactory to such meetings, shall be present at both the meetings at which the extra-

ordinary resolution is passed, and shall answer any inquiries made of him, and he, or, if he is so prevented from being at such meetings, some one on his behalf, shall produce to the meetings a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due.

**120.** The extraordinary resolution, together with the statement of the debtors to be registered, shall be presented to the registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section, and if satisfied that it has been so passed he shall forthwith register the resolution and statement of assets and debts; but until such registration has taken place such resolution shall be of no validity; and any creditor of the debtor may inspect such statement at prescribed times, and on payment of such fee, if any, as may be prescribed.

**121.** The creditors may, by an extraordinary resolution, add to or vary the provisions of any composition previously accepted by them, without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation; and any such extraordinary resolution shall be presented to the registrar in the same manner and with the same consequences as the extraordinary resolution by which the composition was accepted in the first instance.

**122.** The provisions of a composition accepted by an extraordinary resolution in pursuance of this section shall be binding on all the creditors whose names and addresses, and the amount of the debts due to whom, are shown in the statement of the debtor, produced to the meetings at which the resolution has passed, but shall not affect or prejudice the rights of any other creditors.

**123.** Where a debt arises on a bill of exchange, hundi or promissory note, if the debtor is ignorant of the holder of any such bill of exchange, hundi or promissory note, he shall be required to state the amount of such bill, hundi

or note, the date on which it falls due, the name of the acceptor or person to whom it is payable, and any other particulars within his knowledge respecting the same; and the insertion of such particulars shall be deemed a sufficient description of the creditor of the debtor in respect of such debt, and any mistake made inadvertently by a debtor in the statement of his debts may be corrected after the prescribed notice has been given, with the consent of a general meeting of his creditors:

**124.** The provisions of any composition made in pursuance of this section may be enforced by the Court on a motion made in a summary manner by any person interested, and any disobedience of the order of the Court made on such motion shall be deemed to be an offence under the Indian Penal Code, section 187.

**125.** Rules of Court may be made in relation to proceedings on the occasion of the acceptance of a composition by an extraordinary resolution of creditors in the same manner and to the same extent and of the same authority as in respect of proceedings in insolvency:

**126.** If it appear to the Court on satisfactory evidence that a composition under this section cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor an insolvent, and proceedings may be had accordingly.

**127.** The registration by the registrar of a special resolution of the creditors on the occasion of a liquidation by arrangement under Part five of this Act, or of an extraordinary resolution of the creditors on the occasion of a composition under the sixth Part of this Act, shall, in the absence of fraud, be conclusive evidence that such resolutions respectively were duly passed and all the requisitions of this Act in respect of such resolutions complied with.

#### STATEMENT OF OBJECTS AND REASONS.

The primary object of this Bill is to establish, throughout British India, a law under which the property of an insolvent may be cheaply and speedily divided amongst his creditors, and the Bill provides that such division shall be conducted by the creditors themselves, either under the immediate supervision of the Court, or by a process called "liquidation by arrangement." The Bill also defines and amends the law relating to compositions with creditors.

An Insolvent law, the 11th & 12th Vic., cap. 21, exists in the three Presidency towns, but the Judges who have had most experience in working it consider it defective in many respects. In the Mofussil, the 270th and 271st sections of the Code of Civil Procedure act as a sort of substitute for a law of bankruptcy. They provide simply that, if property is attached and sold in execution of a decree, the surplus, if any, shall be divided rateably amongst any other persons who, prior to the order for distribution, have taken out execution of decrees against the defendant and not obtained satisfaction.

These provisions have, in practice, been found to act in a very crude and imperfect manner. They are obviously very incomplete. They provide no machinery for the collection of the insolvent's assets. They contain no security against fraud. They hold out a premium to a competition between creditors for the first decree, which in practice is most injurious to their common interests. The first creditor who gets a decree and takes out execution is entitled to be paid in full, while the rest come in *pari passu* and

divide what is left. The result is (as Mr. Broughton remarks) that there is an injurious contest for the first decree against a trader supposed to be in difficulties ; that his property is attached and sold on the spot, always at a considerable loss ; that perishable goods are hurried away to improper receptacles and are often greatly damaged, and that the judgment debtor is tempted to resort to fraud in order to avoid the consequences of his position. Thus an insolvent defendant often selects which of his creditors shall be paid in full, or which shall be paid at all ; and in many cases (says Mr. Justice Markby, 3 Ben. Law Rep. A. C. J. 403) the first in the list of attaching creditors is really only a nominal creditor acting on behalf of the defendant.

The present Bill is taken from the Bankruptcy Act of 1869 (32 & 33 Vic., c. 71). Its leading feature is that the insolvent obtains his discharge on the surrender of his property, if his assets are sufficient to pay eight annas in the rupee, or if his creditors wish him to be discharged. If the assets do not reach this amount, and if the difference is not paid in three years, the amount unpaid becomes a judgment debt against the insolvent, which may be enforced with the leave of the Court.

Several modifications have been introduced in order to adapt the English measure to India. Of these, the most important are the following : The Bill makes no distinction between traders and non-traders : the 'Chief Insolvency Court' is defined so as to include the four High Courts and the Chief Court of the Panjâb ; the Local Insolvency Courts will be, in the Regulation Provinces, the District Courts ; in the Non-Regulation Provinces, other than British Burma and Sindh, the Commissioners of Divisions ; in Burma the Recorders ; in Sindh the Judicial Commissioner. All orders made by the Chief Insolvency Court in respect of matters brought before it on appeal will be final, unless such Court gives leave to appeal to the Judicial Committee of the Privy Council.

SIMLA,  
27th Sept. 1870. }

J. F. STEPHEN.

WHITLEY STOKES,  
*Seey. to the Govt. of India,  
Legislative Dept.*



# The Gazette of India.

Published by Authority.

CALCUTTA, SATURDAY, NOVEMBER 12, 1870.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 19.

GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Bill, and Statement of Objects and Reasons accompanying it, are published for general information by order of His Excellency the Governor General, under the 19th of the Rules for the Conduct of Business at Meetings of the Council of the Governor General of India for the purpose of making Laws and Regulations:—

No. 26 OF 1870.

## INSOLVENCY BILL.

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## SECTION.

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## A BILL TO AMEND THE LAW OF INSOLVENCY.

Whereas it is expedient to amend the law relating to Insolvency; It is hereby enacted as follows:—

*Preamble.**Short title.*

1. This Act may be cited as "The Indian Insolvency Act, 1871."

*Extent of Act.*

2. This Act extends to the whole of British India.

3. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-one.

4. On and from that day the eleventh and twelfth of Victoria, Chapter twenty-one, shall be repealed.

Repeal of 11 & 12 Vic. cap. 21.

5. In this Act,

Interpretation of certain terms in the Act. if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them; that is to say,

"The Court" shall mean the court having jurisdiction in Insolvency as by this Act provided:

"Court." "The Registrar" shall mean the Registrar of "the Court" as above defined or, where there is no Registrar, such officer as the Court appoints in this behalf:

"Prescribed" shall mean prescribed by rules of Court to be made as in this Act provided:

"Prescribed." "Property" shall mean and include money, goods, things in action, land, and every description of property, whether moveable or immoveable; also, obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined:

"Debt provable in insolvency" shall include any debt or liability by this "Debt." Act made provable in insolvency:

6. A partnership, association, or company corporate, or registered under companies and large partnerships. "The Indian Companies Act, 1863," shall not be adjudged insolvent under this Act.

## PART I.

## ADJUDICATION, VESTING AND ADMINISTRATION OF PROPERTY.

*Adjudication.*

7. A single creditor, or two or more creditors, if the debt due to such single Petition for adjudication creditor or the aggregate amount of debts due to such several creditors, from any debtor, amount to a sum of not less than five hundred rupees, may present a petition to the Court, praying that the debtor be adjudged an insolvent, and alleging as the ground for such adjudication any one or more of the following acts or defaults, hereinafter deemed to be and included under the expression "acts of insolvency":

- (1) That the debtor has, in India or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally;
- (2) That the debtor has, in India or elsewhere, made a fraudulent conveyance, gift, delivery, or transfer of his property or of any part thereof;
- (3) That the debtor has, with intent to defeat or delay his creditors, done any of the following things, namely, departed out of India, or departed from his dwelling house, or otherwise absented himself; or begun to keep house; or being out of India, remained out of India, or suffered himself to be outlawed;

- (4.) That the debtor has filed in the prescribed manner in the Court a declaration admitting his inability to pay his debts :
- (5.) That execution issued against the debtor on any legal process for the purpose of obtaining payment of not less than five hundred rupees has been levied by seizure and sale of his goods :
- (6.) That the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons requiring the debtor to pay a sum due, of an amount of not less than five hundred rupees, and the debtor has for the space of fourteen days succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same.

But no person shall be adjudged an insolvent on any of the above grounds unless the act of insolvency on which the adjudication is grounded has occurred within six months before the presentation of the petition for adjudication.

The debt of the petitioning creditor must be a liquidated sum due and must not be a secured debt, unless the petitioner state in his petition that he will be ready to give up such security for the benefit of the creditors in the event of the debtor being adjudicated an insolvent, or unless the petitioner is willing to give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated; but he shall, on an application being made by the trustee within the prescribed time after the date of adjudication, give up his security to such trustee for the benefit of the creditors upon payment of such estimated value.

#### 8. A debtor's summons may be granted by the Court on a creditor proving to its satisfaction that

Proceedings in relation to a debtor's summons.

a debt sufficient to support a petition in insolvency is due to him from the person against whom the summons is sought, and that the creditor has failed to obtain payment of his debt, after using reasonable efforts to do so.

The summons shall be in the prescribed form, resembling, as nearly as circumstances admit, a summons issued under the Code of Civil Procedure. It shall state that in the event of the debtor failing to pay the sum specified in the summons, or to compound for the same to the satisfaction of the creditor, a petition may be presented against him, praying that he may be adjudged an insolvent.

The summons shall have an endorsement thereon to the like effect, or such other prescribed endorsement as may be best calculated to indicate to the debtor the nature of the document served upon him, and the consequences of inattention to the requisitions therein made.

Any debtor served with a debtor's summons may apply to the Court, in the prescribed manner and within the prescribed time, to dismiss such summons, on the ground that he is not indebted to the creditor serving such summons, or that he is not indebted to such amount as will justify such creditor in presenting an insolvency petition against him;

and the Court may dismiss the summons, with or without costs, if satisfied with the allegations made by the debtor, or it may, upon such security

(if any) being given as the Court may require for payment to the creditor of the debt alleged by him to be due, and the costs of establishing such debt, stay all proceedings on the summons for such time as will be required for the trial of the question relating to such debt.

#### 9. A petition praying that a debtor may be adjudged an insolvent, in this

Proceedings on petition. Act referred to as an insolvency petition, shall be served in the prescribed manner.

At the hearing, the Court shall require proof of the debt of the petitioning creditor, and of the trading, if necessary, and of the act of insolvency, or, if more than one act of insolvency is alleged in the petition, of some one of the alleged acts of insolvency, and, if satisfied with such proof, shall adjudge the debtor to be insolvent.

The Court may adjourn the petition, either conditionally or unconditionally, for the procurement of further evidence, or for any other just cause, or may dismiss the petition, with or without costs, as the Court thinks just.

#### 10. Where the debtor appears on the petition,

Proceedings if debt of petitioning creditor is contested.

and denies that he is indebted to the petitioner, or that he is indebted to such amount as would justify the petitioner in presenting an insolvency petition against him, the Court, upon such security (if any) being given as the Court may require, for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing such debt, may stay all proceedings on the petition for such time as may be required for trial of the question relating to such debt, and such trial shall be had in manner hereinbefore provided with respect to disputed debts under debtors' summonses.

Where proceedings are stayed, the Court may, if by reason of the delay caused by such stay of proceedings or for any other cause it thinks just, adjudge the debtor an insolvent on the petition of some other creditor, and shall thereupon dismiss, upon such terms as it thinks just, the petition proceedings in which have been stayed as aforesaid.

#### 11. A copy of an order of the Court adjudging

Advertisement of order of adjudication.

the debtor to be insolvent shall be published in the local official Gazette, and be advertised locally in such manner (if any) as may be prescribed, and the date of such order shall be the date of the adjudication for the purposes of this Act, and the production of a copy of the Gazette containing such order as aforesaid shall be conclusive evidence in all legal proceedings of the debtor having been duly adjudged an insolvent, and of the date of the adjudication.

#### 12. The insolvency of a debtor shall be deemed

Definition of commencement of insolvency.

to have relation back to and to commence on the completion of the act of insolvency on which the order adjudging him to be insolvent is made.

If the insolvent is proved to have committed more acts of insolvency than one, the insolvency shall be deemed to relate back to and to commence at the time of the first of the acts of insolvency that may be proved to have been committed by the insolvent within twelve months next preceding the order of adjudication. The insolvency shall

not relate to any prior act of insolvency, unless at the time of committing such prior act the insolvent was indebted to some creditor or creditors in a sum or sums sufficient to support a petition in insolvency, and unless such debt or debts are still remaining due at the time of the adjudication.

**13.** Where a debtor is adjudicated an insolvent, no creditor to whom the Creditors bound by insolvent is indebted in respect of any debt provable in the insolvency shall have any remedy against the property or person of the insolvent in respect of such debt except in manner directed by this Act.

This section shall not affect the power of any creditor holding a security upon the property of the insolvent to realize or otherwise deal with such security in the same manner as he would have been entitled to realize or deal with the same if this section had not been passed.

**14.** The Court may, at any time after the presentation of an insolvency petition against the debtor, to restrain suits, &c., and appoint receiver. Power of Court, after presentation of petition, to restrain suits, &c., and appoint receiver. in any suit, execution, or other legal process against him in respect of any debt provable in insolvency, or it may allow such proceedings, whether in progress at the commencement of the insolvency or commenced during its continuance, to proceed upon such terms as the Court thinks just.

The Court may also, at any time after the presentation of such petition, appoint a receiver or manager of the property or business of the debtor against whom the petition is presented, or of any part thereof, and may direct immediate possession to be taken of such property or business, or any part thereof.

#### *Appointment of Trustee.*

**15.** When an order has been made adjudging a debtor insolvent, herein referred to as an order of persons to administer insolvent's property. Meeting of creditors adjudication, the property of the insolvent shall become divisible amongst his creditors in proportion to the debts proved by them in the insolvency; and for the purpose of effecting such division the Court shall, as soon as may be, summon a general meeting of his creditors, and the creditors assembled at such meeting shall and may do as follows:

- (1.) They shall, by resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the insolvent, at such remuneration (if any) as they may from time to time determine, or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned :
- (2.) They shall, when they appoint a trustee, by resolution declare what security is to be given, and to whom, by the person so appointed, before he enters on the office of trustee :
- (3.) They shall, by resolution, appoint some other fit persons, not exceeding five in number, and being creditors qualified to vote at such first meeting of creditors as is in this Act mentioned, or authorized in the prescribed form by creditors so qualified to vote, to form a committee of in-

spection for the purpose of superintending the administration by the trustee of the insolvent's property :

- (4.) They may, by resolution, give directions as to the manner in which the property is to be administered by the trustee, and it shall be the duty of the trustee to conform to such directions, unless the Court for some just cause otherwise orders.

**16.** The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise the following particulars :

- (1.) Property held by the insolvent on trust for any other person :
- (2.) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding two hundred rupees in the whole :

But it shall comprise the following particulars :—

- (3.) All such property as may belong to or be vested in the insolvent at the commencement of the insolvency, or may be acquired by or devolve on him during its continuance :
- (4.) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or during its continuance :
- (5.) All goods and chattels being, at the commencement of the insolvency, in the possession, order, or disposition of the insolvent, by the consent and permission of the true owner, of which goods and chattels the insolvent is reputed owner, or of which he has taken upon himself the sale or disposition as owner : provided that things in action, other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause.

**17.** The general meeting of creditors to be summoned as aforesaid by Regulations as to first meeting of creditors. the Court, and in this Act referred to as the first meeting of creditors, shall be held in the prescribed manner and subject to the prescribed regulations as to the quorum, adjournment of meeting, and all other matters relating to the conduct of the meeting or the proceedings thereat :

Provided that,—

1. The meeting shall be presided over by the registrar, or, in the event of his being unable to attend through illness or any unavoidable cause, by such chairman as the meeting may elect :
2. No person shall be entitled to vote as a creditor unless at or previously to the meeting he has in the prescribed manner proved a debt provable under the insolvency to be due to him :
3. No creditor shall vote at the said meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained :

4. A secured creditor shall, for the purpose of voting, be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security; and the amount of such balance shall, until the security be realized, be determined in the prescribed manner. He may, however, at or previously to the meeting of creditors, give up the security to the trustee, and thereupon he shall rank as a creditor in respect of the whole sum due to him :
5. A "secured creditor" shall in this Act mean any creditor holding any mortgage, charge, or lien on the insolvent's estate, or any part thereof, as security for a debt due to him :
6. Votes may be given either personally or by proxy :
7. An ordinary resolution shall be decided by a majority in value of the creditors present personally or by proxy at the meeting and voting on such resolution :
8. A special resolution shall be decided by a majority in number, and three-fourths in value, of the creditors present personally or by proxy at the meeting and voting on such resolution.
18. Until a trustee is appointed the registrar shall be the trustee for the Devolution of property purposes of this Act, and on trustee immediately upon the order of adjudication being made the property of the insolvent shall vest in the registrar. On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.

The expression "trustee," when used in this Act, shall include the person for the time being filling the office of trustee, whether he be the registrar or not; but when the registrar holds the office of trustee he shall, unless the Court otherwise orders, in the administration of the property of the insolvent, apply to the Court for directions as to the mode of administering such property, and shall not take possession thereof unless directed by the Court.

19. The appointment of a trustee shall be reported to the Court, and Evidence of appointment the Court, upon being satisfied that the requisite security has been entered into by him, shall give a certificate declaring him to be trustee of the insolvency named in the certificate: such certificate shall be conclusive evidence of the appointment of the trustee, and such appointment shall date from the date of the certificate.

When the registrar holds the office of trustee, or when the trustee is changed, a like certificate of the Court may be made declaring the person therein named to be trustee, and such certificate shall be conclusive evidence of the person therein named being trustee.

#### *Administration of Property.*

20. The insolvent shall, to the utmost of his Conduct of insolvent power, aid in the realization of his property, and the distribution of the proceeds amongst his creditors.

He shall produce a statement of his affairs to the first meeting of creditors, and shall be publicly examined thereon on a day to be named by the

Court, and subject to such adjourned public examination as the Court may direct.

He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such meetings of his creditors, wait at such times on the trustee, execute such powers of attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the trustee, or may be prescribed by rules of Court, or be directed by the Court by any special order or orders made in reference to any particular insolvency, or made on the occasion of any special application by the trustee or any creditor.

If the insolvent wilfully fail to perform the duties imposed on him by this section, or if he fail to deliver up possession to the trustee of any part of his property, which is divisible amongst his creditors under this Act, and which may for the time being be in the possession or under the control of such insolvent, he shall, in addition to any other punishment to which he may be subject, be deemed guilty of an offence under the Indian Penal Code, section one hundred and eighty-seven, and may be punished accordingly.

21. The trustee shall, in the administration of Conduct of trustee, and the property of the insolvent appeal to Court against and in the distribution thereof trustee. of amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection; and any directions so given by the creditors at any general meeting shall be deemed to override any directions given by the committee of inspection.

The trustee shall call a meeting of the committee of inspection once at least every three months, when they shall audit his accounts, and determine whether any or what dividend is to be paid; he may also call special meetings of the said committee as he thinks necessary.

Subject to the provisions of this Act, and to such directions as aforesaid, the trustee shall exercise his own discretion in the management of the estate, and its distribution amongst the creditors.

The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes; he may also apply to the Court, in manner prescribed, for directions in relation to any particular matter arising under the insolvency.

The insolvent, or any creditor, debtor, or other person aggrieved by any act of the trustee, may apply to the Court, and the Court may confirm, reverse, or modify the act complained of, and make such order in the premises as it thinks just.

The Court may from time to time, during the continuance of an insolvency, summon general meetings of the creditors for the purpose of ascertaining their wishes, and may, if the Court thinks fit, direct the registrar to preside at such meetings.

The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent, be in the same position in all respects as if he were a receiver of such property appointed by the Court under the Code of Civil Procedure, and the Court may, on his appli-

cation, enforce such acquisition or retention of property accordingly.

**22.** The provisions of this Act with respect to Regulations as to general meetings of creditors subsequent to first meeting of creditors in an insolvency, with this exception,

that subsequent meetings of creditors may be summoned by the trustee, or by a member of the committee of inspection,

and that such meetings may, unless otherwise directed by the Court in the case of meetings summoned by the Court, be presided over by any person chosen by the creditors assembled at such meeting,

and that any creditor whose debt has been proved, or the value of whose debt has been ascertained at or subsequently to such first meeting, shall be allowed to be present and to vote thereat.

#### *Dealings with Insolvent's Property.*

**23.** Where any portion of the property of the insolvent consists of stock,

Possession of property by trustee. shares in ships, shares, or any other property transferable in the books of any company, office, or person, the right to transfer such property shall be absolutely vested in the trustee to the same extent as the insolvent might have exercised the same if he had not become insolvent.

Where any portion of the property of the insolvent consists of things in action, any suit or other proceeding for the recovery of such things instituted by the trustee shall be instituted in his official name, as in this Act provided; and such things shall, for the purpose of such suit or other proceeding, be deemed to be assignable in law, and to have been duly assigned to the trustee in his official capacity.

The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the insolvent, and all other property capable of manual delivery. The trustee shall keep, in such manner as rules of Court direct, proper books, in which he shall from time to time make or cause to be made entries or minutes of proceedings at meetings, and of such other matters as rules of Court direct, and any creditor of the insolvent may, subject to the control of the Court, personally or by his agent inspect such books.

**24.** When any property of the insolvent acquired by the trustee under this Act consists of land of any tenure burdened with

Disclaimer as to onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding he has endeavoured to sell, or has taken possession of such property or exercised any act of ownership in relation thereto, may, by writing under his hand, disclaim such property.

Effect of disclaimer. Upon the execution of such disclaimer the property disclaimed shall,

if the same is a contract, be deemed to be determined from the date of the order of adjudication,

and if the same is a lease, be deemed to have been surrendered on the same date,

and if the same be shares in any company, be deemed to be forfeited from that date,

and if any other species of property, it shall revert to the person entitled on the determination of the estate or interest of the insolvent, but if there shall be no person in existence so entitled, then in no case shall any estate or interest therein remain in the insolvent.

Any person interested in any disclaimed property may apply to the Court, and the Court may, upon such application, order possession of the disclaimed property to be delivered up to him, or make such other order as to the possession thereof as may be just.

Any person injured by the operation of this section shall be deemed a creditor of the insolvent to the extent of such injury, and may accordingly prove the same as a debt under the insolvency.

**25.** Any person interested in such property as is mentioned in the first clause of section twenty-four

Limitation of time for disclaimer. may give notice in writing to the trustee to decide whether he will disclaim it or not. If the trustee fails, within twenty-eight days after the receipt of such application or such further time as may be allowed by the Court, he shall not be entitled to disclaim any such property.

**26.** Subject to the provisions of this Act, the Power of trustee to deal with property. trustee shall have power to do the following things :

- (1.) To receive and decide upon proof of debts in the prescribed manner, and for such purpose to administer oaths :
- (2.) To carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same :
- (3.) To bring or defend any suit, or other legal proceeding relating to the property of the insolvent :
- (4.) To deal with any property to which the insolvent is beneficially entitled as tenant in tail in the same manner as the insolvent might have dealt with the same :
- (5.) To exercise any powers the capacity to exercise which is vested in him under this Act, and to execute all powers-of-attorney, deeds, and other instruments expedient or necessary for the purpose of carrying into effect the provisions of this Act :
- (6.) To sell all the property of the insolvent (including the goodwill of the business, if any, and the book-debts due or growing due to the insolvent) by public auction or private contract, with power, if he thinks fit, to transfer the whole thereof to any person or company, or to sell the same in parcels :
- (7.) To give for any monies received by him, receipts which shall effectually discharge the persons paying such monies from all responsibility in respect of the application thereof :
- (8.) To prove, rank, claim, and draw a dividend in the matter of the insolvency of any debtor of the insolvent.

**27.** The trustee may appoint the insolvent himself to superintend the management of the property or of any part thereof, or to carry on the insolvent's trade (if any) for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the creditors direct.

**28.** The trustee may, with the sanction of the committee of inspection, do all or any of the following things:

- (1) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts;
- (2) refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist, between the insolvent and any debtor or person who may have incurred any liability to the insolvent, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon;
- (3) make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors in respect of any debts provable under the insolvency;
- (4) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the insolvent, made or capable of being made on the trustee by any person or by the trustee on any person;
- (5) divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot advantageously be realized by sale.

The sanction given for the purposes of this section may be a general permission to do all or any of the above-mentioned things, or a permission to do all or any of them in any specified case or cases.

**29.** The trustee may, with the sanction of a special resolution of the creditors assembled at any meeting of which notice has been given specifying the object of such meeting, accept any composition offered by the insolvent, or assent to any general scheme of settlement of the affairs of the insolvent upon such terms as may be thought expedient, and with or without a condition that the order of adjudication is to be annulled, subject nevertheless to the approval of the Court, to be testified by the judge of the Court signing the instrument containing the terms of such composition or scheme, or embodying such terms in an order of the Court.

Where the fulfilment of the order of adjudication is made a condition of any composition with the insolvent or of any general scheme for the liquidation of his affairs, the Court, if it approves of such composition or general scheme, shall annul the adjudication on an application made by or on behalf

of any person interested, and the adjudication shall be annulled from and after the date of the order annulling the same.

The provisions of any composition or general scheme made in pursuance of this Act may be enforced by the Court on a motion made in a summary manner by any person interested, and any disobedience of the order of the Court made on such motion shall be deemed an offence under the Indian Penal Code, section 187. The approval of the Court shall be conclusive as to the validity of any such composition or scheme, and it shall be binding on all the creditors so far as relates to any debts due to them and provable under the insolvency.

**30.** A trustee may contract to be paid a certain sum by way of percentage or otherwise as a remuneration for his services as trustee, including (where the trustee is an attorney or vakil) all professional services, and any such contract shall, notwithstanding any law to the contrary, be lawful.

No trustee shall, without the consent of the committee of inspection, employ an attorney, vakil or other agent.

**31.** The trustee shall, from all sums from time to time received by him under this Act, deduct three per centum, and pay such percentage into the General or District Treasury to the credit of the Government of India, and shall pay the residue into such Bank as the majority of the creditors in number and value at any general meeting appoint, and failing such appointment into the General or District Treasury. If the trustee at any time keep in his hands any such sum exceeding five hundred rupees for more than ten days he shall be subject to the following liabilities; that is to say,

- (1) He shall pay interest at the rate of twenty per centum per annum on the excess of such sum above five hundred rupees as he may retain in his hands;
- (2) Unless he can prove to the satisfaction of the Court that his reason for retaining the money was sufficient, he shall, on the application of any creditor, be dismissed from his office by the Court, and shall have no claim for remuneration, and be liable to any expenses to which the creditors may be put by or in consequence of his dismissal.

Any trustee failing to deduct and pay the said percentage as prescribed by this section shall be liable to fine of double the amount which should have been so deducted and paid.

All monies received by Government under this section shall be applied to defray the salaries of the Comptrollers in Insolvency, their clerks and servants, and the other expenses of working this Act.

#### *Payment of Debts and Distribution of Assets.*

**32.** Demands in the nature of unliquidated damages arising otherwise than by reason of a contract provable in insolvency, or promise shall not be provable in insolvency, and no person having notice of any act of insolvency available for adjudication

against the insolvent shall prove for any debt or liability contracted by the insolvent subsequently to the date of his so having notice.

Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the insolvent is subject at the date of the order of adjudication, or to which he may become subject during the continuance of the insolvency by reason of any obligation incurred previously to the date of the order of adjudication, shall be deemed to be debts provable in insolvency, and may be proved in the prescribed manner before the trustee in the insolvency.

An estimate shall be made according to the rules of the Court for the time being in force, so far as the same may be applicable, and, where they are not applicable, at the discretion of the trustee, of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court, and the Court may, if it think the value of the debt or liability incapable of being fairly estimated, make an order to that effect, and upon such order being made such debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in insolvency.

But if the Court think that the value of the debt or liability is capable of being fairly estimated, it may direct such value to be assessed before the Court, or either before the Court itself or some other competent Court, and may give all necessary directions for such purpose, and the amount of such value when assessed shall be provable as a debt under the insolvency.

"Liability" shall for the purposes of this Act include any compensation for work or labour done,

any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether such breach does or does not occur, or is or is not likely to occur or capable of occurring before the close of the insolvency;

and generally it shall include any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of, money or money's worth, whether such payment be, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or assessable only as matter of opinion.

### 33. The debts hereinafter mentioned shall be paid in priority to all other debts.

Between themselves, such debts shall rank equally and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves; that is to say,

- (1.) All local rates due from him at the date of the order of adjudication, and having become due and payable within twelve months next before such time; all assessed taxes, land-tax, and income-tax assessed on him up to the first day of April next before the date of the order of ad-

judication, and not exceeding in the whole one year's assessment;

- (2.) All wages or salary of any clerk or servant in the employment of the insolvent at the date of the order of adjudication, not exceeding four months' wages or salary, and not exceeding five hundred rupees; all wages of any labourer or workman in the employment of the insolvent at the date of the order of adjudication, and not exceeding two months' wages:

Save as aforesaid, all debts provable under the insolvency shall be paid *pari passu*.

**34.** Where at the time of the presentation of the petition for adjudication Preferential claim in case of apprenticeship. any person is apprenticed or is an articled clerk to the insolvent, the order of adjudication shall, if either the insolvent or apprentice or clerk give notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement;

and if any money has been paid by or on behalf of such apprentice or clerk to the insolvent as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as such trustee, subject to an appeal to the Court, thinks reasonable, out of the insolvent's property to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the insolvent under the indenture or articles before the commencement of the insolvency, and to the other circumstances of the case.

Where it appears expedient to a trustee he may, on the application of any apprentice or articled clerk to the insolvent, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

**35.** The landlord or other person to whom any rent is due from the insolvent may at any time, either Power for landlord to distraint for rent. before or after the commencement of the insolvency, distraint upon the goods or effects of the insolvent for the rent due to him from the insolvent.

If such distress for rent be levied after the commencement of the insolvency, it shall be available only for one year's rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the insolvent may prove under the insolvency for the overplus due for which the distress may not have been available.

**36.** When any rent or other payment falls due at stated periods, and Proof in case of rent and periodical payment. the order of adjudication is made at any time other than one of such periods, the person entitled to such rent or payment may prove for a proportionate part thereof up to the day of the adjudication as if such rent or payment grew due from day to day.

**37.** Interest on any debt provable in insolvency may be allowed by the trustee under the same circumstances in which interest would have been allowable if a suit had been brought for such debt.

**38.** If any insolvent is at the date of the order of adjudication liable in respect of distinct contracts as member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts, against the properties respectively liable upon such contracts.

**39.** The trustee, with the consent of the creditors, testified by a resolution passed in general meeting, for maintenance or service. may from time to time, during the continuance of the insolvency, make such allowance as may be approved by the creditors to the insolvent out of his property for the support of the insolvent and his family, or in consideration of his services if he is engaged in winding up his estate.

**40.** Where there have been mutual credits, mutual debts, or other mutual dealings between the insolvent and any other person proving or claiming to prove a debt under his insolvency, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of such account, and no more, shall be claimed or paid on either side respectively.

But a person shall not be entitled under this section to claim the benefit of any set-off against the property of an insolvent in any case where he had at the time of giving credit to the insolvent notice of an act of insolvency committed by such insolvent and available against him for adjudication.

**41.** A creditor holding a specific security on the property of the insolvent Provision as to secured creditor. or on any part thereof, may, on giving up his security, prove for his whole debt.

He shall also be entitled to a dividend in respect of the balance due to him after realizing or giving credit for the value of his security, in manner and at the time prescribed.

A creditor holding such security as aforesaid and not complying with the foregoing conditions shall be excluded from all share in any dividend.

#### *Dividends.*

**42.** The trustee shall from time to time, when Distribution of dividends. the committee of inspection determines, declare a dividend amongst the creditors who have proved to his satisfaction debts provable in insolvency, and shall distribute the same accordingly.

In the event of his not declaring a dividend for the space of six months, he shall summon a meeting of the creditors, and explain to them his reasons for not declaring the same.

**43.** In the calculation and distribution of a Provision for creditors residing at a distance, &c. dividend it shall be obligatory on the trustee to make provision for debts provable

in insolvency appearing from the insolvent's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in insolvency, the subject of claims not yet determined.

**44.** Any creditor who has not proved his debt Right of creditor who has not proved debt before the declaration of any dividend or dividends shall be entitled to be paid out of dividend.

any monies for the time being in the hand of the trustee any dividend or dividends he may have failed to receive before such monies are made applicable to the payment of any future dividend or dividends;

but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

**45.** When the trustee has converted into Final dividend. money all the property of the insolvent, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized without needlessly protracting the insolvency, he shall declare a final dividend, and give notice of the time at which it will be distributed.

**46.** The insolvent shall be entitled to any Insolvent entitled to plus remaining after payment of his creditors, and surplus. of the costs, charges, and expenses of the insolvency.

**47.** No suit for a dividend shall lie against the trustee. But if the trustee No suit for dividend. refuses to pay any dividend, the Court may, if it thinks fit, order the trustee to pay the same, and also to pay out of his own monies interest thereon for the time that it is withheld, and the costs of the application.

#### PART II.

##### TERMINATION OF INSOLVENCY.

**48.** When the whole property of the insolvent has been realized for the Close of insolvency. benefit of his creditors, or so much thereof as can, in the joint opinion of the trustee and committee of inspection, be realized without needlessly protracting the insolvency,

or when a composition or arrangement has been completed,

the trustee shall make a report accordingly to the Court, and the Court, if satisfied that the whole of the property of the insolvent has been realized for the benefit of his creditors, or so much thereof as can be realized without needlessly protracting the insolvency, or that a composition or arrangement has been completed, shall make an order that the insolvency has closed, and the insolvency shall be deemed to have closed at and after the date of such order.

A copy of the order closing the insolvency may be published in the local official Gazette, and the production of a copy of such Gazette containing a copy of the order shall be conclusive evidence of the order having been made and of the date and contents thereof.

*Discharge of Insolvent.*

**49.** When an insolvency is closed, or at any time during its continuance, with the assent of the creditors testified by a special resolution, the insolvent may apply to the Court for an order of discharge.

Such discharge shall not be granted unless it is proved to the Court that one of the following conditions has been fulfilled, that is to say,

either that a dividend of not less than eight annas in the rupee has been paid out of his property, or might have been paid except through the negligence or fraud of the trustee,

or that a special resolution of the insolvent's creditors has been passed to the effect that his insolvency or the failure to pay eight annas in the rupee has, in their opinion, arisen from circumstances for which the insolvent cannot justly be held responsible, and that they desire that an order of discharge should be granted to him.

The Court may suspend for such time as it deems to be just, or withhold altogether, the order of discharge in the circumstances following; namely,

if it appears to the Court on the representation of the creditors made by special resolution, of the truth of which representation the Court is satisfied, or by other sufficient evidence, that the insolvent has made default in giving up to his creditors the property which he is required by this Act to give up;

or that a prosecution has been commenced against him in pursuance of the provisions for the time being in force relating to the punishment of fraudulent debtors, in respect of any offence alleged to have been committed by him against such provisions.

**50.** An order of discharge shall not release the insolvent from any debt or liability incurred by means of any fraud or breach of trust, nor from any debt or liability whereof he has obtained forbearance by any fraud.

But it shall release the insolvent from all other debts provable under the insolvency, with the exception of—

- (1) debts due to the Secretary of State for India in Council;
- (2) debts with which the insolvent stands charged at the suit of the said Secretary of State in Council or of any person for any offence against an Act relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail-bond entered into for the appearance of any person prosecuted for any such offence:

And he shall not be discharged from such excepted debts unless a Secretary to the Government of India certify in writing the consent of the Governor-General of India in Council to the insolvent's being discharged therefrom.

An order of discharge shall be sufficient evidence of the insolvency, and of the validity of the proceedings thereon; and in any proceedings instituted against an insolvent who has obtained an order of discharge in respect of any debt from which he is released by such order, the in-

solvent may state that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.

**51.** The order of discharge shall not release any person who, at the date of the order of adjudication, was a partner with the insolvent, or was jointly bound or had made any joint contract with him.

*Release of Trustee.*

**52.** When the insolvency is closed the trustee shall call a meeting of the creditors to consider an application to be made to the Court for his release.

At the meeting the trustee shall lay before the assembled creditors an account showing the manner in which the insolvency has been conducted, with a list of the unclaimed dividends, if any, and of the property, if any, outstanding, and shall inform the meeting that he proposes to apply to the Court for a release.

The creditors assembled at the meeting may express their opinion as to the conduct of the trustee, and they, or any of them, may appear before the Court and oppose the release of the trustee.

The Court, after hearing what, if anything, can be urged against the release of the trustee, shall grant or withhold the release accordingly, and if it withhold the release shall make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty, and shall suspend his release until such charging order has been complied with, and the Court thinks just to grant the release of the trustee.

**53.** Unclaimed dividends, and any other monies arising from the unclaimed dividends and property of the insolvent, outstanding under the control of the trustee at the close of the insolvency of any insolvent, or accruing thereafter, shall be accounted and paid over to such account as may be directed by the rules of Court to be made with the sanction of the Governor-General in Council; and any parties entitled thereto may claim the same in manner directed by such rules.

The trustee shall also deliver a list of any outstanding property of the insolvent to the prescribed persons, and the same shall, when practicable, be got in and applied for the benefit of the creditors in manner prescribed.

**54.** The order of the Court releasing the trustee of an insolvency shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the insolvent, or otherwise in relation to his conduct as trustee of such insolvent.

Such order may be revoked by the Court on proof that it was obtained by fraud.

*Status of undischarged Insolvent.*

**55.** Where a person who has been made insolvent has not obtained his discharge, then, from and after the close of his insolvency, the following consequences shall ensue:—

- (1) No portion of a debt provable under the insolvency shall be enforced against the

property of the person so made insolvent until the expiration of three years from the close of the insolvency; and during that time, if he pay to his creditors such additional sum as will, with the dividend paid out of his property during the insolvency, make up eight annas in the rupee, he shall be entitled to an order of discharge in the same manner as if a dividend of eight annas in the rupee had originally been paid out of his property:

- (2.) At the expiration of a period of three years from the close of the insolvency, if the debtor made insolvent has not obtained an order of discharge, any balance remaining unpaid in respect of any debt proved in such insolvency (but without interest in the meantime,) shall be deemed to be a subsisting debt in the nature of a judgment debt, and, subject to the rights of any persons who have become creditors of the debtor since the close of his insolvency, may be enforced against any property of the debtor, with the sanction of the Court which adjudicated such debtor an insolvent, or of the Court having jurisdiction in insolvency in the place where the property is situated, but to the extent only, and at the time and in manner, directed by such Court, and after giving such notice and doing such acts as may be prescribed in that behalf.

#### *Audit.*

56. The trustee, having had his quarterly statement of accounts audited by the committee of inspection, shall, within the prescribed time, forward the certified statement in the prescribed form to an officer to be called the comptroller in insolvency, and if he fail to do so he shall be deemed guilty of an offence under the Indian Penal Code, section 176, and be punishable accordingly.

There shall be three such comptrollers, whose titles and jurisdictions shall be as follows:—

(1) the Comptroller in Insolvency of Bengal, whose jurisdiction shall extend to the territories for the time being respectively under the governments of the Lieutenant Governors of Bengal, the North-Western Provinces, and the administrations of the Chief Commissioners of Oudh, the Central Provinces and British Burma;

(2) the Comptroller in Insolvency of Madras, whose jurisdiction shall extend to the territories for the time being under the government of the Governor of Fort St. George in Council, to Coorg, and (so far as regards British subjects) to Mysore, and

(3) the Comptroller in Insolvency of Bombay, whose jurisdiction shall extend to the territories for the time being under the government of the Governor of Bombay in Council, and also (so far as regards British subjects) to the Hyderabad Assigned Districts.

The first Comptrollers in Insolvency under this Act shall be respectively the present Official Assignees of the Courts for the relief of insolvent

debtors holden under the said statute of the eleventh and twelfth of Victoria, chapter twenty-one, in Calcutta, Madras and Bombay.

The subsequent comptrollers shall be appointed, and the first and any subsequent comptrollers may be removed, in the case of the Comptroller in Insolvency of Bengal, by the Governor General in Council, and in the cases of the other Comptrollers in Insolvency, by the Local Government, and shall be paid such salary as the Governor General of India in Council may direct.

Each comptroller shall be provided with such office, and with such clerks and servants, as may be directed by the Local Government with the approval of the Governor General in Council.

The clerks and servants in the office of the comptroller shall be appointed and dismissible by each comptroller, and there shall be allowed and paid to him such sum as the Governor General in Council may from time to time direct for the expenses of his office, and of such clerks and other persons as may be deemed necessary by the Governor General in Council.

57. Every trustee of an insolvent shall

*Return of accounts to comptroller.* from time to time, as may be prescribed, and not less than once in every year during the insolvency, transmit to the comptroller within whose jurisdiction he is a statement showing the proceedings in such insolvency up to the date of the statement containing the prescribed particulars, and made out in the prescribed form;

and any trustee failing to transmit accounts in compliance with this section shall be deemed guilty of an offence under the Indian Penal Code, section 176, and be punishable accordingly.

58. The comptroller shall examine the statements transmitted to him

*Duty of comptroller.* and shall call the trustee to account for any misfeasance, neglect, or omission which may appear on such statements, and may require the trustee to make good any loss the estate of the insolvent may have sustained by such misfeasance, neglect, or omission.

If the trustee fail to comply with such requisition of the comptroller, the comptroller may report the same to the Court; and the Court, after hearing the explanation, if any, of the trustee, shall make such order in the premises as it thinks just.

59. The comptroller may at any time require

*Powers of comptroller.* any trustee to answer any inquiry made by him in relation to any insolvency in which such trustee is engaged, and may, if he think fit, apply to the Court to examine on oath such trustee or any other person concerning such insolvency;

he may also direct a local investigation to be made of the books and vouchers of the trustees.

### PART III. CONSTITUTION AND POWERS OF COURT.

#### *Description of Court.*

60. From and after the commencement of this Act the following provisions

*Court to consist of High Court and District Courts.* shall take effect with respect to the Courts having jurisdiction in Insolvency and

their officers; that is to say,

If the person sought to be adjudged an insolvent reside or carry on business within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay, or within the limits of the towns of Allahabad or Lahore, then "the Court" shall mean, for the purposes of this Act, the High Court or the Chief Court of the Panjab, as the case may be, and is hereinafter referred to as the Chief Insolvency Court:

If the person sought to be adjudged an insolvent do not reside or carry on business within such limits, then "the Court" shall, subject to the provisions hereinafter contained for removing the proceedings, mean the Court of the District Judge within whose jurisdiction such person resides or carries on business, and is hereinafter referred to as the Local Insolvency Court.

In the former part of this section "District Judge" means, in the Regulation Provinces, a Judge of a principal Civil Court of original jurisdiction,

in the Non-Regulation Provinces, other than British Burma and Sindh, a Commissioner of Division,

in Pegu, the Recorder at Rangoon,

in Arakan, the Recorder at Rangoon, until a Recorder's Court is established at Akyab, and thenceforward the Recorder at Akyab,

in the Tenasserim Provinces, the Recorder at Maulmain, and

in Sindh, the Judicial Commissioner in that Province.

Every Chief Insolvency Court shall be holden once a month at least throughout the year by any one Judge of the said High Courts and Chief Court, respectively.

**61. Subject to the provisions in this Act with respect to the officers of the existing Courts for the Relief of Insolvent Debtors at Cal-**

**cutta, Madras and Bombay, the registrars, clerks, and other subordinate officers of the Chief Insolvency Courts shall be appointed by the Chief Justice or Senior Judge for the time being, and may be removed by him and others appointed in their stead if he is of opinion that they are negligent, unskillful, or untrustworthy in the performance of their duties, or ought, in his opinion, to be removed for any other just cause.**

**62. Subject as aforesaid, there shall be paid to the registrars, clerks, and other subordinate officers such salaries as the Local Government with the sanction of the Governor General of India in Council may determine.**

**63. Subject as aforesaid, the registrars, clerks, and other subordinate officers of the Chief Insolvency Court shall perform such duties as may from time to time be assigned to them by the Chief Justice.**

**64. Every Judge holding a Chief Insolvency Court shall have all the powers, jurisdiction, and privileges possessed by any Judge of a High Court, and the orders of such Judge shall be of the same force as if they were decrees of such High Court.**

**65. Every Judge of a Local Court of Insolvency** shall, for the purposes of this Act, in addition to his ordinary powers as a District Court Judge, have all the powers and jurisdiction of a Judge of a High Court, and the orders of such Judge may be enforced accordingly in manner prescribed.

**66. Every Judge of a Chief and of a Local Court of Insolvency** may, delegate authority to subject and in accordance with the rules of Court for the time being in force, delegate to the registrar or to any other officer of his Court such of the powers vested in him by this Act as it may be expedient for the Judge to delegate to him.

**67. The Chief Justice or (in the case of the Chief Court of the Panjab) the Senior Judge, shall, with the sanction of the Governor General of India in Council, from time to time prescribe a scale of fees to be charged for any business done by any Court or officer thereof under this Act; and the Governor General in Council shall direct whether the same shall be imposed by stamps or otherwise, and by whom and in what manner the same shall be collected, accounted for, and appropriated, and whether any and what remuneration shall be allowed to any person performing any duties under this Act.**

**68. No registrar or officer of any Court having jurisdiction in insolvency** shall, during his continuance in office, either directly or indirectly, by himself or partner, act as an attorney or vakil in any proceeding in any insolvency in any Court of which he is registrar or officer, or in any appeal from such Court, or in any prosecution of an insolvent by order of such Court, under pain of dismissal by the Judge; and such dismissal shall be in writing, stating the reasons for the same; and a copy thereof shall be sent to the Chief Justice, who, if he see fit, may reinstate such registrar or officer.

**69. Every advocate, attorney, and vakil of a High Court** shall be, and may practise in any Insolvency Court, and if any person not being such advocate, attorney, or vakil practises in the Court of Insolvency as advocate, attorney, or vakil, he shall be deemed guilty of a contempt of the Court.

**70. Every Court having jurisdiction in insolvency** under this Act may review, rescind, or vary any order made by it in pursuance of this Act.

Any person aggrieved by any order of a Local Insolvency Court in respect of a matter of fact or of law made in pursuance of this Act, may appeal to the Chief Insolvency Court, and it shall be lawful for such Court to alter, reverse, or confirm such order as it thinks just.

All orders made by the Chief Insolvency Court in respect of matters brought before it on appeal shall be final, unless such Court gives leave to appeal to the Judicial Committee of the Privy Council.

For the purpose of this section 'Chief Insolvency Court' shall, in British Burma, mean the Chief Insolvency Court held at Fort William,

and in any other Non-Regulation province (except the Panjab) the Chief Insolvency Court held where the High Court is established to whose original criminal jurisdiction the insolvent is for the time being subject, or would be subject if he were an European British subject of Her Majesty.

**71.** Subject to the provisions of this Act, every Court having jurisdiction in insolvency under this Act shall have full power to

decide all questions of priorities, and all other questions whatsoever, whether of law or fact, arising in any case of insolvency coming within the cognizance of such Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case;

and no such Court as aforesaid shall be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor shall any appeal lie from its decisions, except in manner directed by this Act.

#### *Orders and Warrants of Court.*

**72.** Any order made by a Court having jurisdiction in insolvency in any part of British India under this Act, shall be enforced in

any other part of British India in the Courts having jurisdiction in insolvency in such parts, in the same manner in all respects as if such order had been made by the Courts which are hereby required to enforce the same.

**73.** The Chief Insolvency Court and the Local Insolvency Courts, and the

officers of such Courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of the Court seeking aid, together with a request to another of the said Courts, shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by such order, the like jurisdiction which the Court which made the request, as well as the Court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

**74.** Any Court having jurisdiction in insolvency in any part of British India under this Act may, if it thinks fit, order that a person named in the order being in any other part of British India shall be examined there.

**75.** Any warrant of a Court having jurisdiction in insolvency in any part of British India under this Act may be enforced in any other part of British India, in the same manner in which a warrant issued under the Code of Criminal Procedure may be executed; and any search-warrant issued by a Court having jurisdiction in insolvency under this Act for the discovery of any property of an insolvent may be executed in manner prescribed, or in

the same manner and subject to the same privileges in and subject to which a search-warrant for property supposed to be stolen may be executed according to law.

**76.** Where any Court having jurisdiction in Commitment to prison. insolvency under this Act commits any person to prison, the commitment may be to such convenient prison as the Court thinks expedient, and if the gaoler of any prison refuses to receive any prisoner so committed he shall be liable for every such refusal to a penalty not exceeding one thousand rupees.

#### *General Rules.*

**77.** The Chief Justice or (in the case of the Chief Court of the Panjab) the Senior Judge may from time to time make, and may from time to time revoke and alter, general rules, in this Act described as rules of Court, for the effectual execution of this Act and of the objects thereof, and the regulation of the practice and procedure of insolvency petitions and the proceedings thereon.

Any general rules made as aforesaid may prescribe regulations as to the following matters:—

the service of insolvency petitions, including provisions for substituted service;

the valuing of any debts provable in an insolvency;

the valuation of securities held by creditors;

the giving or withholding interest or discount on or in respect of debts or dividends;

the funds out of which costs are to be paid, the order of payment, and the amount and taxation thereof;

and as to any other matter or thing, whether similar or not to those above enumerated, in respect to which it may be expedient to make rules for carrying into effect the objects of this Act.

All rules so made shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act.

All rules made in pursuance of this section shall be laid before the Governor General in Council within three weeks after they are made, and all rules so made shall be judicially noticed.

Until rules have been made in pursuance of this Act, and so far as such rules do not extend, the principles, practice, and rules on which Courts having jurisdiction in insolvency have heretofore acted in dealing with insolvency proceedings shall be observed by any Court having jurisdiction in insolvency cases under this Act.

#### PART IV.

##### SUPPLEMENTAL PROVISIONS.

###### *As to Proceedings.*

**78.** The following regulations shall be made with respect to proceedings in insolvency; namely,

- (1.) Every insolvency petition shall be accompanied by an affidavit of the petitioner in the prescribed form, verifying the statements contained in such petition:

- (2.) Where two or more insolvency petitions are presented against the same debtor or against debtors being members of the same partnership, the Court may consolidate the proceedings, or any of them, upon such terms as the Court thinks fit :
- (3.) Where proceedings against the debtor are instituted in more Courts than one, the Chief Insolvency Court may, on the application of any creditor, direct the transfer of such proceedings to such Court or to any Local Insolvency Court :
- (4.) Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor :
- (5.) Where the creditors resolve by a special resolution that it will be more convenient that the proceedings in any Local Insolvency Court should be transferred to the Chief Insolvency Court or to some other local Court, or where the judge of a local Court certifies that in his opinion the insolvency would be more advantageously conducted in the Chief Insolvency Court or in some other local Court, and the creditors do not by resolution object to the transfer, the petition shall be transferred to and all subsequent proceedings thereon had in the Chief Insolvency Court or such other local Court :
- (6.) Subject to the provisions of this Act, every Court having original jurisdiction in insolvency shall be deemed to be the same Court, and to have jurisdiction throughout British India; and cases may be transferred from one Court to another in such manner as may be prescribed :
- (7.) A corporation may prove a debt, vote, and otherwise act in insolvency, by an agent duly authorized under the seal of the corporation :
- (8.) A creditor may, in the prescribed manner, by instrument in writing, appoint a person to represent him in all matters relating to any debtor or his affairs in which a creditor is concerned in pursuance of this Act, and such representative shall thereupon, for all the purposes of this Act, stand in the same position as the creditor who appointed him :
- (9.) When a debtor who has been adjudicated an insolvent dies, the Court may order that the proceedings in the matter be continued as if he were alive :
- (10.) The Court may, at any time, on proof to its satisfaction that proceedings in insolvency ought to be stayed, by reason that negotiations are pending for the liquidation of the affairs of the insolvent by arrangement, or for the acceptance of a composition by the creditors in pursuance of the provisions hereinafter contained, or on proof to its satisfaction of any other sufficient reason for staying the same, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

**79. Whenever any adjudication in insolvency is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the trustee or any person acting under his authority, or by the Court, shall be valid; but the property of the debtor who was adjudged an insolvent shall in such case vest in such person as the Court may appoint, or, in default of any such appointment, revert to the insolvent for all his estate or interest therein, upon such terms and subject to such conditions, if any, as the Court declares by order.**

A copy of the order of the Court annulling the adjudication of a debtor as an insolvent shall be forthwith published in the local official Gazette and advertised locally in the prescribed manner, and the production of a copy of the Gazette containing such order shall be conclusive evidence of the fact of the adjudication having been annulled, and of the terms of the order annulling the same.

**80. No proceeding in insolvency shall be invalidated by any formal defect in the proceedings.** Formal defects not to invalidate proceedings. unless the Court before which an objection is made to such proceeding is of opinion that substantial injustice has been caused by such defect or irregularity, and that such injustice cannot be remedied by any order of such Court.

*As to Trustees and Committee of Inspection.*

**81. The following regulations shall be made with respect to the trustee and committee of inspection:**

- Regulations as to trustees, &c.
- (1.) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and where more than one are appointed they shall declare whether any act required or authorized to be done by the trustee is to be done by all or any one or more of such persons; but all such persons are in this Act included under the term "trustee," and shall be joint tenants of the property of the insolvent. The creditors may also appoint persons to act as trustees in succession, in the event of one or more of the persons first named declining to accept the office of trustee :
- (2.) If any vacancy occur in the office of trustee by death, resignation, or otherwise, the creditors in general meeting shall fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing trustee, if there be more than one, or by the registrar on the requisition of any creditor :
- (3.) If, through any cause whatever, there is no trustee acting during the continuance of an insolvency, the registrar of the Court for the time being having jurisdiction in the insolvency shall act as such trustee :
- (4.) The Court may, upon cause shown, remove any trustee. The creditors may by special resolution at a meeting specially called for that purpose, of which seven days' notice has been given, remove the trustee and appoint another

- person to fill his office, and the Court shall give a certificate declaring him to be the trustee :
- (5.) If a trustee be adjudged insolvent, he shall cease to be trustee, and the registrar shall, if there be no other trustee, call a meeting of creditors for the appointment of another trustee in his place :
- (6.) The property of the insolvent shall pass from trustee to trustee, including under that term the registrar when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever :
- (7.) The trustee of an insolvent may sue and be sued by the official name of "the trustee of the property of an insolvent," inserting the name of the insolvent, and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding upon himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office :
- (8.) The certificate of appointment of a trustee shall, for the purposes of the Indian Registration Act, be deemed to be a conveyance or assignment of property, and may be registered accordingly :
- (9.) All acts and things by this Act authorized or required to be done by or to the registrar may be done within the district of each Court having jurisdiction in insolvency by or to the registrar of that Court :
- (10.) Any member of the committee of inspection may resign his office by notice in writing signed by him and delivered to the trustee :
- (11.) The creditors may by resolution fix the quorum required to be present at a meeting of the committee of inspection :
- (12.) Any member of the committee of inspection may also be removed by a special resolution at any meeting of creditors of which the prescribed notice has been given, stating the object of the meeting :
- (13.) On any vacancy occurring in the office of a member of the committee of inspection by removal, death, resignation, or otherwise, the trustee shall convene a meeting of creditors for the purpose of filling up such vacancy :
- (14.) The continuing members of the committee of inspection may act, notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it does not exceed five :
- (15.) No defect or irregularity in the election of a trustee or of a member of the committee of inspection shall vitiate any act *bona fide* done by him; and no act or proceeding of the trustee or of the creditors shall be invalid by reason of any failure of the creditors to elect all or any members of the committee of inspection :
- (16.) If a member of the committee of inspection become an insolvent his office shall thereupon become vacant :
- (17.) Where there is no committee of inspection, any act or thing or any direction or consent by this Act authorized or required to be done or given by such committee may be done or given by the Court on the application of the trustee.
- 82.** The registrar may adjourn the first meeting of creditors from time to time and from place to place, subject to the directions of the Court; but if, at such first meeting of creditors or at some adjournment thereof, no trustee is appointed by reason of the prescribed quorum not being present, or for any other reason whatever, the Court may annul the adjudication, unless it deems it expedient to carry on the insolvency with the aid of the registrar as trustee.
- Moreover, if at any time during the insolvency no new trustee is appointed to fill a vacancy in that office, the Court may either carry on the insolvency with the aid of the registrar as trustee or annul the order of adjudication as it thinks just.
- As to Power over Insolvent.*
- 83.** The Court, upon the application of the trustee, may from time to time order that, for such time as the Court thinks fit, not exceeding three months from the date of the order of adjudication, post letters addressed to the insolvent at any place or any of the places mentioned in the order, shall be re-directed, sent, or delivered by the Director General of the Post Office or the officers acting under him to the trustee or otherwise as the Court directs, and the same shall be done accordingly.
- 84.** The Court may, by warrant addressed to any constable or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, monies, goods, and moveable property in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Court orders, under the following circumstances :—
- (1.) If, after a petition of insolvency is presented against such debtor, it appear to the Court that there is probable reason for believing that he is about to go abroad or to quit his place of residence with a view of avoiding service of the petition, or of avoiding appearing to the petition, or of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings in insolvency :
- (2.) If, after a petition in insolvency has been presented against such debtor, it appear to the Court that there is probable

cause for believing that he is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of by the trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or chattels, or any books, documents, or writings which might be of use to his creditors in the course of his insolvency :

- (3.) If, after the service of the petition on such debtor, or after an adjudication in insolvency against him, he removes any goods or chattels in his possession above the value of fifty rupees, without the leave of the trustee, or if, without good cause shown, he fails to attend any examination ordered by the Court.

*As to Property devolving on Trustee.*

85. Where the goods of any trader have been taken in execution in respect  
Proceeds of sale and seizure of goods.

of a decree for a sum exceeding five hundred rupees and sold, the sheriff, in the case of a sale under the direction of the High Court at Fort William, Madras, or Bombay, and in the case of a sale under the direction of any other Court, the proper officer of such Court, shall retain the proceeds of such sale in his hands for a period of fourteen days, and upon notice being served on him within that period of an insolvency petition having been presented against such trader, shall hold the proceeds of such sale, after deducting expenses, on trust to pay the same to the trustee.

But if no notice of such petition having been presented be served on him within such period of fourteen days, or if, such notice having been served, the trader against whom the petition has been presented is not adjudged an insolvent on such petition, or on any other petition of which the sheriff or other officer has notice, he may deal with the proceeds of such sale in the same manner as he would have done had no notice of the presentation of an insolvency petition been served on him.

86. Where an insolvent is or has been an officer of the army or navy, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, or is in the enjoyment of any pension or compensation granted by Government, the trustee during the insolvency, and the registrar after the close of the insolvency, shall receive for distribution amongst the creditors so much of the insolvent's pay, half pay, salary, emolument, or pension as the Court, upon the application of the trustee, thinks just and reasonable, to be paid in such manner and at such times as the Court, with the consent in writing of the chief officer of the Department under which the pay, half pay, salary, emolument, pension, or compensation is enjoyed, directs.

87. Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court upon the application of the trustee shall from time to time make such order as it thinks just for the payment of such salary or income, or of any part thereof, to the trustee

during the insolvency, and to the registrar if necessary after the close of the insolvency, to be applied by him in such manner as the Court directs.

88. Any settlement of property not being a

Avoidance of voluntary settlements. in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes insolvent within two years after the date of such settlement, be void as against the trustee of the insolvent appointed under this Act,

and shall, if the settlor becomes insolvent at any subsequent time within ten years after the date of such settlement, unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement, be void against such trustee.

Any covenant or contract made by any person, in consideration of marriage, for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, upon his becoming insolvent before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee appointed under this Act.

"Settlement" shall for the purposes of this section include any conveyance or transfer of property.

89. Every conveyance or transfer of property,

Avoidance of fraudulent preferences. or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own monies in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same become insolvent within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee of the insolvent appointed under this Act;

but this section shall not affect the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration.

90. Every treasurer or other officer, or any

Payment of money by agents to trustee. banker, attorney, or agent of an insolvent, shall pay and deliver to the trustee all monies and securities in his possession or power, as such officer or agent, if he be not by law entitled to retain as against the insolvent or the trustee; if he do not, he shall be guilty of an offence under the Indian Penal Code, section 187, and may be punished accordingly on the application of the trustee.

Protection of certain transactions with insolvent. Nothing in this Act contained shall render invalid—

- (1.) Any payment made in good faith and for value received to any insolvent before the

date of the order of adjudication by a person not having at the time of such payment notice of any act of insolvency committed by the insolvent, and available against him for adjudication :

- (2.) Any payment or delivery of money or goods belonging to an insolvent, made to such insolvent by a depositary of such money or goods before the date of the order of adjudication, who had not at the time of such payment or delivery notice of any act of insolvency committed by the insolvent, and available against him for adjudication :
- (3.) Any contract or dealing with any insolvent made in good faith and for valuable consideration, before the date of the order of adjudication, by a person not having at the time of making such contract or dealing notice of any act of insolvency committed by the insolvent, and available against him for adjudication.

**92. Subject and without prejudice to the provisions of this Act relating**

**Protection of certain transactions entered into by or in relation to the property of the insolvent.**

and avoiding, on the ground of their constituting fraudulent preferences, certain conveyances, charges, payments, and judicial proceedings, the following transactions by and in relation to the property of an insolvent shall be valid, notwithstanding any prior act of insolvency,—

- (1.) Any disposition or contract with respect to the disposition of property by conveyance, transfer, charge, delivery of goods, payment of money, or otherwise, howsoever made by any insolvent in good faith and for valuable consideration, before the date of the order of adjudication, with any person not having at the time of the making of such disposition of property notice of any act of insolvency committed by the insolvent, and available against him for adjudication :
- (2.) Any execution or attachment against the land of the insolvent, executed in good faith by seizure before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not at the time of the same being so executed by seizure notice of any act of insolvency committed by the insolvent, and available against him for adjudication :
- (3.) Any execution or attachment against the goods of any insolvent, executed in good faith by seizure and sale before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not at the time of the same being executed by seizure and sale notice of any act of insolvency committed by the insolvent, and available against him for adjudication.

*As to Discovery of Insolvent's Property.*

**93. The Court may, on the application of the**

**Power of Court to summon persons before it suspected of having property of insolvent.**

insolvent or his wife,

or any person whatever known or suspected to have in his possession any of the estate or effects belonging to the insolvent, or supposed to be indebted to the insolvent,

or any person whom the Court deems capable of giving information respecting the insolvent, his trade, dealings or property,

and the Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property.

If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce such documents, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant addressed as aforesaid, cause such person to be apprehended and brought up for examination.

**94. The Court may examine upon oath, either Examination of parties by word of mouth or by Court.** written interrogatories, any person so brought before it in manner aforesaid concerning the insolvent, his dealings or property.

**95. If any person on examination before the Order of Court for payment of amount admitted on examination.** Court admit that he is indebted to the insolvent, the Court may, on the application of the trustee, order him to pay to the trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.

**96. Any person acting under warrant of the Seizure of property of insolvent.** Court may seize any property of the insolvent divisible amongst his creditors under this Act, and in the insolvent's custody or possession, or in that of any other person ;

and with a view to such seizure may break open any house, building, or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be.

Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any constable or prescribed officer of the Court, who may execute the same according to the tenor thereof.

*Joint and separate Estates.*

**97. Any creditor whose debt is sufficient to entitle him to present an insolvency petition against one partner.** Power to present petition against all the partners of a firm may present such petition against any one or more partners of such firm without including the others.

**98. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.** Power to dismiss petition against some respondents only.

**99. Where one member of a partnership has been adjudicated an insolvent, any other petition for adjudication against a mem-** Property of partners to be vested in same trustee.

ber of the same partnership shall be filed in or transferred to the Court in which the first-mentioned petition is in course of prosecution,

and, unless the Court otherwise directs, the property of such last-mentioned member shall vest in the trustee appointed in respect of the property of the first-mentioned member of the partnership,

and the Court may give such directions for amalgamating the proceedings in respect of the properties of the members of the same partnership as it thinks just.

**100.** If one partner of a firm is adjudged Joint creditor may insolvent, any creditor to prove for purpose of voting whom the insolvent is indebted jointly with the other

partners of the firm or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat, but shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

**101.** Where joint and separate properties are being administered, dividends of the joint and sepa-

rate properties shall, subjects to any order to the contrary that may be made by the Court on the application of any person interested, be declared together.

The expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

**102.** Where a member of a partnership is adjudged insolvent, the Court

Suits by trustee and may authorize the trustee, with consent of the creditors, certified by a special resolution, to commence and prosecute any suit in the names of the trustee and of the insolvent partner; and any release by such partner of the debt or demand to which the action or suit relates shall be void.

But notice of the application for authority to commence the suit shall be given to such partner, and he may show cause against it, and on his application, the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the suit, and if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the Court directs.

#### *Evidence.*

**103.** The registrar, or any other person presiding at a meeting of creditors under this Act, shall cause minutes to be kept and duly entered in a book of all resolutions and proceedings of such meeting.

Any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, shall be received as evidence in all legal proceedings;

and, until the contrary is proved, every general meeting of the creditors in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed theretofore or proceedings had to have been duly passed and had.

Evidence of proceedings in insolvency.

**104.** Any petition or copy of a petition in insolvency,

any order or copy of an order made by any Court having jurisdiction in insolvency,

any certificate or copy of a certificate made by any Court having jurisdiction in insolvency,

any deed or copy of a deed of arrangement in insolvency,

and any other instrument or copy of an instrument, affidavit, or document made or used in the course of any insolvency proceedings, or other proceedings had under this Act,

may, if any such instrument as aforesaid or copy of an instrument appears to be sealed with the seal of any Court having jurisdiction, or purports to be signed by any Judge having jurisdiction in insolvency under this Act, be receivable in evidence in all legal proceedings whatever.

**105.** In case of the death of the insolvent or Death of witness. his wife, or of a witness whose evidence has been re-

ceived by any Court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposited to. \*

**106.** Every Court having jurisdiction in insol-

vency under this Act shall Insolvency Courts to have seals. have a seal describing such Court in such manner as may be directed by order of the Chief Justice, and judicial notice shall be taken of such seal, and of the signature of the Judge or registrar of any such Court, in all legal proceedings.

#### *Miscellaneous.*

**107.** Where a registrar under the authority of Expenses of registrar attending meetings, &c. this Act attends at any place for the purpose of presiding at a meeting of creditors, or of receiving proofs, or of otherwise acting under this Act, his travelling and incidental expenses incurred in so doing, and those of any clerk or officer attending him, shall, after being settled by the Court, be paid out of the insolvent's property, if sufficient, and otherwise shall be deemed part of the expenses of the Court.

**108.** Any person to whom anything in action belonging to the insolvent is Power of assignee to sue. assigned in pursuance of this Act may bring or defend any suit relating to such thing in action in his own name.

**109.** Where an insolvent is a contractor in Saving as to joint contracts. respect of any contract jointly with any other person or persons, such person or persons may sue or be sued in respect of such contract without the joinder of the insolvent.

**110.** Every deed, conveyance, assignment or Exemption of deeds, &c., from stamp-duty. other assurance relating solely to immoveable property, or to any mortgage, charge, or other incumbrance on, or any estate, right, or interest in, any moveable or immoveable property which is part of the estate of any insol-

vent, and which after the execution of such deed, conveyance, assignment or other assurance, is or remains the estate of the insolvent or of the trustee under the insolvency, and every power-of-attorney, proxy-paper, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any insolvent or to any proceeding under any insolvency, shall be exempt from stamp-duty (except in respect of fees under this Act).

**111.** Where by this Act any limited time from Computation of time. or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then, in the computation of such limited time, the same shall be taken as exclusive of the day of such date or of the happening of such event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of such limited time according to such computation, unless such last day is a Sunday, Christmas Day, Good Friday, or a day on which, in pursuance of a notification by the Chief Justice under this Act, the Court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

Where by this Act any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be one of the days in this section specified, such act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

**112.** The registrars and other officers of the Courts acting in insolvency Returns by insolvency officer. shall make to the Local Government such returns of the business of their respective Courts and offices, at such times and in such manner and form as may be prescribed by the rules of Court, and from such returns such officer as the Local Government shall from time to time appoint shall, in manner prescribed by the rules of Court, frame books (which shall be, under the regulations of the rules of Court, open for public information and searches), and also a general annual report to the Government of India, judicial and financial, respecting all matters within this Act.

**113.** Where any dividends remain unclaimed Forfeiture of dividends after five years' non-claim. for five years, then and in every such case the same shall be deemed vested in the Secretary of State for India in Council, and shall be disposed of as the Governor General of India in Council directs.

**114.** Where an insolvent is a trustee within the Removal of insolvent from trusteeship. Indian Trustee Act, 1866, section thirty-five of that Act shall have effect so as to authorize the Court to appoint a new trustee in substitution for the insolvent (whether voluntarily resigning or not), if it appears to the Court expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

## PART V.

### LIQUIDATION BY ARRANGEMENT.

#### Regulations.

**115.** The following regulations are prescribed with respect to the liquidation by arrangement of the affairs of the debtor:

- (1.) A debtor unable to pay his debts may summon a general meeting of his creditors, and such meeting may, by a special resolution as defined by this Act, declare that the affairs of the debtor are to be liquidated by arrangement and not in insolvency, and may at that or some subsequent meeting, held at an interval of not more than a week, appoint a trustee, with or without a committee of inspection.
- (2.) All the provisions of this Act relating to a first meeting of creditors, and to subsequent meetings of creditors in the case of an insolvency, including the description of creditors entitled to vote at such meetings, and the debts in respect of which they are entitled to vote, shall apply respectively to the first meeting of creditors, and to subsequent meetings of creditors, for the purposes of this section, subject to the following modifications:
- (a.) Every such meeting shall be presided over by such chairman as the meeting may elect; and
- (b.) No creditor shall be entitled to vote until he has proved by oath a debt provable in insolvency to be due to him, and the amount of such debt, with any prescribed particulars; and any person wilfully making a false oath in relation to such debt shall be deemed guilty of the offence of giving false evidence in a judicial proceeding:
- (3.) The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the meeting at which the special resolution is passed, and shall answer any inquiries made of him, and he, or, if he is so prevented from being at such meeting, some one on his behalf, shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom his debts are due:
- (4.) The special resolution, together with the statement of the assets and debts of the debtor, and the name of the trustee appointed, and of the members, if any, of the committee of inspection, shall be presented to the registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section; but if satisfied that it was so passed, and that a trustee has been appointed with or without a committee of inspection, he shall forthwith register the resolution and the statement of the assets and debts of the debtor, and such resolution and statement shall be open for inspection on the

- prescribed conditions, and the liquidation by arrangement shall be deemed to have commenced as from the date of the appointment of the trustee:
- (5.) All such property of the debtor as would, if he were made insolvent, be divisible amongst his creditors shall, from and after the date of the appointment of a trustee, vest in such trustee under a liquidation by arrangement, and be divisible amongst the creditors, and all such settlements, conveyances, transfers, charges, payments, obligations, and proceedings as would be void against the trustee in the case of an insolvency shall be void against the trustee in the case of liquidation by arrangement.
- (6.) The certificate of the registrar in respect of the appointment of any trustee in the case of a liquidation by arrangement shall be of the same effect as a certificate of the Court to the like effect in the case of an insolvency:
- (7.) The trustee under a liquidation shall have the same powers, and perform the same duties, as a trustee under an insolvency, and the property of the debtor shall be distributed in the same manner as in an insolvency;
- and with the modification hereinafter mentioned all the provisions of this Act shall, so far as the same are applicable, apply to the case of a liquidation by arrangement in the same manner as if the word "insolvent" included a debtor whose affairs are under liquidation, and the word "insolvency" included liquidation by arrangement;
- and in construing such provisions, the appointment of a trustee under a liquidation shall, according to circumstances, be deemed to be equivalent to and a substitute for the presentation of a petition in insolvency, or the service of such petition or an order of adjudication in insolvency:
- (8.) The creditors at their first or any general meeting may prescribe the Bank into which the trustee is to pay any monies received by him, and the sum which he may retain in his hands:
- (9.) The provisions of this Act with respect to the close of the insolvency, discharge of an insolvent, to the release of the trustee, and to the audit of accounts by the comptroller shall not apply in the case of a debtor whose affairs are under liquidation by arrangement.
- But the close of the liquidation may be fixed, and the discharge of the debtor and the release of the trustee may be granted, by a special resolution of the creditors in general meeting, and the accounts may be audited in pursuance of such resolution, at such time and in such manner and upon such terms and conditions as the creditors think fit:
- (10.) The trustee shall report to the registrar the discharge of the debtor, and a certificate of such discharge given by the registrar shall have the same effect as an order of discharge given to an insolvent under this Act:
- (11.) Rules of Court may be made in relation to proceedings on the occasion of liquidation by arrangement in the same manner and to the same extent and of the same authority as in respect of proceedings in insolvency:
- (12.) If it appear to the Court on satisfactory evidence that the liquidation by arrangement cannot, in consequence of legal difficulties, or of there being no trustee for the time being, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor an insolvent, and proceedings may be had accordingly:
- (13.) Where no committee of inspection is appointed, the trustee may act on his own discretion in cases where he would otherwise have been bound to refer to such committee:
- (14.) In calculating a majority on a special resolution for the purposes of this section, creditors whose debts amount to sums not exceeding one hundred rupees shall be reckoned in the majority in value, but not in the majority in number.

## PART VI. COMPOSITION WITH CREDITORS.

### *Regulations.*

**116.** The creditors of a debtor unable to pay his debts may, without any proceedings in insolvency, by an extraordinary resolution, resolve that a composition shall be accepted in satisfaction of the debts due to them from the debtor.

**117.** An extraordinary resolution of creditors shall be a resolution which has been passed by a majority in number and three-fourths in value of the creditors of the debtor, assembled at a general meeting to be held in the manner prescribed, of which notice has been given in the prescribed manner, and has been confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting, of which notice has been given in the prescribed manner, and held at an interval of not less than seven days nor more than fourteen days from the date of the meeting at which such resolution was first passed.

**118.** In calculating a majority for the purposes of a composition under this Part, creditors whose debts amount to sums not exceeding one hundred rupees shall be reckoned in the majority in value, but not in the majority in number, and the value of the debts of secured creditors shall, as nearly as circumstances admit, be estimated in the same way, and the same description of creditors shall be entitled to vote at such general meetings as in insolvency.

**119.** The debtor, unless prevented by sickness or other cause satisfactory Debtor to be present. to such meetings, shall be present at both the meetings at which the extra-

ordinary resolution is passed, and shall answer any inquiries made of him, and he, or, if he is so prevented from being at such meetings, some one on his behalf, shall produce to the meetings a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due.

**120.** The extraordinary resolution, together with the statement of the Extraordinary resolution to be registered. debtor as to his assets and debts, shall be presented to the registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section, and if satisfied that it has been so passed he shall forthwith register the resolution and statement of assets and debts; but until such registration has taken place such resolution shall be of no validity; and any creditor of the debtor may inspect such statement at prescribed times, and on payment of such fee, if any, as may be prescribed.

**121.** The creditors may, by an extraordinary resolution, add to or vary the provisions of any composition previously accepted by them, without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation; and any such extraordinary resolution shall be presented to the registrar in the same manner and with the same consequences as the extraordinary resolution by which the composition was accepted in the first instance.

**122.** The provisions of a composition accepted by an extraordinary resolution in pursuance of this section shall be binding on all the creditors whose names and addresses, and the amount of the debts due to whom, are shown in the statement of the debtor, produced to the meetings at which the resolution has passed, but shall not affect or prejudice the rights of any other creditors.

**123.** Where a debt arises on a bill of exchange, hundi or promissory note, if the debtor is ignorant of the holder of any such bill of exchange, hundi or promissory note, he shall be required to state the amount of such bill, hundi

or note, the date on which it falls due, the name of the acceptor or person to whom it is payable, and any other particulars within his knowledge respecting the same; and the insertion of such particulars shall be deemed a sufficient description of the creditor of the debtor in respect of such debt, and any mistake made inadvertently by a debtor in the statement of his debts may be corrected after the prescribed notice has been given, with the consent of a general meeting of his creditors:

**124.** The provisions of any composition made in pursuance of this section may be enforced by the Court on a motion made in a summary manner by any person interested, and any disobedience of the order of the Court made on such motion shall be deemed to be an offence under the Indian Penal Code, section 187.

**125.** Rules of Court may be made in relation to proceedings on the occasion of the acceptance of a composition by an extraordinary resolution of creditors in the same manner and to the same extent and of the same authority as in respect of proceedings in insolvency:

**126.** If it appear to the Court on satisfactory evidence that a composition under this section cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor an insolvent, and proceedings may be had accordingly.

**127.** The registration by the registrar of a special resolution of the creditors on the occasion of a liquidation by arrangement under Part five of this Act, or of an extraordinary resolution of the creditors on the occasion of a composition under the sixth Part of this Act, shall, in the absence of fraud, be conclusive evidence that such resolutions respectively were duly passed and all the requisitions of this Act in respect of such resolutions complied with.

#### STATEMENT OF OBJECTS AND REASONS.

The primary object of this Bill is to establish, throughout British India, a law under which the property of an insolvent may be cheaply and speedily divided amongst his creditors, and the Bill provides that such division shall be conducted by the creditors themselves, either under the immediate supervision of the Court, or by a process called "liquidation by arrangement." The Bill also defines and amends the law relating to compositions with creditors.

An Insolvent law, the 11th & 12th Vic., cap. 21, exists in the three Presidency towns, but the Judges who have had most experience in working it consider it defective in many respects. In the Mofussil, the 270th and 271st sections of the Code of Civil Procedure act as a sort of substitute for a law of bankruptcy. They provide simply that, if property is attached and sold in execution of a decree, the surplus, if any, shall be divided rateably amongst any other persons who, prior to the order for distribution, have taken out execution of decrees against the defendant and not obtained satisfaction.

These provisions have, in practice, been found to act in a very crude and imperfect manner. They are obviously very incomplete. They provide no machinery for the collection of the insolvent's assets. They contain no security against fraud. They hold out a premium to a competition between creditors for the first decree, which in practice is most injurious to their common interests. The first creditor who gets a decree and takes out execution is entitled to be paid in full, while the rest come in *pari passu* and

divide what is left. The result is (as Mr. Broughton remarks) that there is an injurious contest for the first decree against a trader supposed to be in difficulties ; that his property is attached and sold on the spot, always at a considerable loss ; that perishable goods are hurried away to improper receptacles and are often greatly damaged, and that the judgment debtor is tempted to resort to fraud in order to avoid the consequences of his position. Thus an insolvent defendant often selects which of his creditors shall be paid in full, or which shall be paid at all ; and in many cases (says Mr. Justice Markby, 3 Ben. Law Rep. A. C. J. 403) the first in the list of attaching creditors is really only a nominal creditor acting on behalf of the defendant.

The present Bill is taken from the Bankruptcy Act of 1869 (32 & 33 Vic., c. 71). Its leading feature is that the insolvent obtains his discharge on the surrender of his property, if his assets are sufficient to pay eight annas in the rupee, or if his creditors wish him to be discharged. If the assets do not reach this amount, and if the difference is not paid in three years, the amount unpaid becomes a judgment debt against the insolvent, which may be enforced with the leave of the Court.

Several modifications have been introduced in order to adapt the English measure to India. Of these, the most important are the following : The Bill makes no distinction between traders and non-traders : the 'Chief Insolvency Court' is defined so as to include the four High Courts and the Chief Court of the Panjab ; the Local Insolvency Courts will be, in the Regulation Provinces, the District Courts ; in the Non-Regulation Provinces, other than British Burma and Sindh, the Commissioners of Divisions ; in Burma the Recorders ; in Sindh the Judicial Commissioner. All orders made by the Chief Insolvency Court in respect of matters brought before it on appeal will be final, unless such Court gives leave to appeal to the Judicial Committee of the Privy Council.

SIMLA,  
27th Sept. 1870. }

J. F. STEPHEN.

WHITLEY STOKES,  
*Secy. to the Govt. of India,*  
*Legislative Dept.*



# The Gazette of India.

Published by Authority.

CALCUTTA, SATURDAY, DECEMBER 3, 1870.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 49.

GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd December 1870, and was referred to a Select Committee with instructions to make their report thereon in two months :—

No. 27 OF 1870.

### THE INDIAN LIMITATION BILL, 1871.

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**A BILL FOR THE LIMITATION OF SUITS.**

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; It is hereby enacted as follows:—

*I.—Preliminary.*

1. This Act may be called 'The Indian Limitation Act, 1871.'

Short title.

It extends to the whole of British India;

Local extent.

And it shall come into force on the first day of March 1871:

But nothing herein contained applies to suits in which the right to sue accrued before that day, or to applications to execute decrees or orders then in force.

2. The enactments mentioned in the first schedule hereto annexed are repealed to the extent specified in the third column of the same schedule.

Repeal of enactments.

3. In this Act, unless there be something repugnant in the subject or context—

'plaintiff' includes any person through whom a plaintiff claims:

'bill of exchange' includes a hundí:

'trustee' does not include a benámidár, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title:

'registered' means duly registered under the law for the registration of assurances in force at the time and place of executing the instrument referred to in the context;

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

*II.—Limitation of Suits.*

4. Subject to the provisions contained in sections five to twenty-six (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

*Explanation.*—A suit is instituted in ordinary cases when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

5. Provided—

(a) that if the period of limitation prescribed for any suit, appeal or application is closed when period expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens:

(b) that any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor,

when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period ; and

(c) that no Court, after admitting and registering an appeal, shall dismiss it on the ground that it was not presented within the prescribed period.

**6.** When, by any law now or hereafter to be in force in any part of British India, a period of limitation shorter than that prescribed by this Act is specially prescribed for a particular class of suits or appeals, nothing herein contained shall affect such law.

#### Legal Disability.

Legal disability.

**7.** If a person entitled to sue be, at the time the right to sue accrued,

1<sup>st</sup>, within the age of eighteen years;

2<sup>nd</sup>, insane; or

3<sup>rd</sup>, an idiot;

he may institute the suit within the same period after the disability has ceased, or (when he is at the time of the accrual affected by two disabilities) after both disabilities have ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

When his disability continues up to his death, his representative in interest may institute the suit within the same period after the death as would otherwise have been allowed from the time prescribed therefor in the third column of the same schedule.

Nothing in this section shall be deemed to extend, for more than three years from the cessation or death, the period within which the suit must be brought.

**8.** When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all : but where no such discharge can be given, time will not run as against any of them until they all are free from disability.

Continuous running of time.

**9.** When once time has begun to run, no subsequent disability or inability to sue stops it.

#### III.—Computation of Period of Limitation.

**10.** In computing the period of limitation prescribed for any suit, the day on which the right to sue accrued shall be excluded.

In computing the period of limitation prescribed for an appeal under the Code of Civil Procedure, an application for leave to appeal as a pauper, and an application to the High Court for

the admission of a special appeal, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree appealed against, shall be excluded.

**11.** In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded, unless service of a summons to appear and answer in the suit can, during such absence, be made under the Code of Civil Procedure, section sixty.

**12.** In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another suit, whether in a Court of first instance or in a Court of appeal, against the same defendant or some person whom he represents, shall be excluded, where the last-mentioned suit is founded upon the same right to sue, and is instituted in good faith in a Court not having jurisdiction to try it.

*Explanation 1.*—In excluding the time during which a former suit was pending, the day on which that suit was instituted, and the day on which the proceedings therein ended, shall both be counted.

*Explanation 2.*—A plaintiff resisting an appeal presented on the ground of want of jurisdiction, shall be deemed to be prosecuting a suit within the meaning of this section.

**13.** In computing the period of limitation prescribed for any suit, the commencement of which has been stayed by injunction, the time of the continuance of the injunction shall be excluded.

**14.** In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a suit to set aside the sale shall be excluded.

**15.** When a person who would, if he were living, have a right to sue, dies before the right accrues, the period of limitation shall be computed from the time when there is a representative in interest of the deceased.

When a person against whom, if he were living, a right to sue would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a representative whom the plaintiff may sue.

**16.** When any person having a right to sue has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

and where any document necessary to establish such right has been fraudulently concealed,

the time limited for commencing a suit,  
(a) against the person guilty of the fraud or accessory thereto, or,

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or in the case of the concealed document, when he first had the means of producing it or compelling its production.

**17. No acknowledgment or promise in respect of a debt or legacy shall take effect in writing.** the case out of the operation of this Act, unless such acknowledgment or promise is contained in some writing signed by the party to be charged therewith.

When such writing exists, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment or promise was signed: Provided that, where more partners, executors, or other persons than one are liable, none of them shall become chargeable by reason only of a written acknowledgment or promise signed by another of them.

When the writing containing the acknowledgment or promise is undated, oral evidence may be given of the time when it was signed. But when it is alleged to have been destroyed or lost, oral evidence of its contents shall not be received.

*Explanation.*—For the purposes of this section, an acknowledgment or promise may be sufficient, though it omits to specify the exact amount of the debt or legacy, or avers that the time for payment or delivery has not yet come, or sets up limitation as a bar, or is accompanied by a refusal to pay or deliver, or is coupled with a claim to a set-off, or is addressed to any person other than the creditor or legatee.

*Illustrations.*—Z, a bond-debtor, himself writes a letter promising to pay the debt to his creditor A. Z affixes his seal, but does not sign the letter:

He pays part of the debt and promises orally to pay the rest:

He pays interest on the debt:

He pays part of the debt, and signs a memorandum of the part-payment:

Z's agent writes and signs a letter to A, promising to pay the debt:

Z publishes an advertisement, requesting his creditors to bring in their claims for examination:

In none of these cases is the debt taken out of the operation of this Act.

**18. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the period of limitation applicable to such suit shall, as regards him, be computed up to the time when he was so made a party:**

Provided that when a defendant dies, and the suit is continued against his representatives in interest, it shall, as regards them, be deemed to have been commenced when it was instituted against the deceased defendant.

**19. In the case of a contract, where there are successive breaches, a fresh right to sue arises, and a fresh period of limitation begins**

*Computation where the breach is continuing.* Computation where the breach is a continuing breach, a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the breach continues.

*Continuing nuisance.* In the case of a continuing nuisance a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the nuisance continues.

*Illustration (a).*—A contracts to pay an annuity to B for his life by quarterly instalments. A fails to pay any of the instalments. Here upon every fresh failure, a fresh right to sue arises and a fresh period of limitation begins to run; and this Act may bar the remedy on the earlier breaches without affecting the remedy on the later breaches.

*Illustration (b).*—A, a tenant, covenants with B, his landlord, to keep certain buildings in repair. At every moment of the time during which the buildings continue out of repair and B retains his right of entry, a fresh right to sue arises and a fresh period of limitation begins to run.

*Illustration (c).*—A diverts B's watercourse. At every moment of the time during which the diversion continues and B retains his right of entry, a fresh right to sue arises and a fresh period of limitation begins to run.

**20. In the case of a suit for compensation for an act lawful in itself, which becomes unlawful in case it causes damage, the period of limitation shall be computed from the time when the damage accrues.**

When the damage done by such act is of a continuing nature, the period of limitation shall be computed from the time when such damage ceases.

*Illustration (a).*—A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation runs from the time of the subsidence.

*Illustration (b).*—A digs a canal on his own land and thereby causes a stream of water to flow against his neighbour's wall and gradually to undermine it, so that at last the wall falls. The period of limitation runs from the time of the falling.

**21. When a decree directs payment to be made by instalments at specified dates, for the purpose of computing the time within which application may be made to enforce each instalment, the date when it becomes due shall be deemed the date of the decree.**

**22. In the absence of evidence to the contrary, an instrument made by a Native shall, for the purposes of this Act, be deemed to be**

*Time mentioned in Native instruments.*

made with reference to the calendar ordinarily employed by him.

*Illustration (a).*—A Hindú makes a promissory note bearing a Native date only, and payable four months after date. There is no evidence as to the calendar to which he referred. In computing the period of limitation applicable to a suit on the note, the four months shall be computed according to the Native calendar ordinarily used by the maker.

*Illustration (b).*—A Hindú makes a bond, bearing a Native date only, for the repayment of money within one year. There is no evidence as to the calendar to which he referred. The year shall be computed according to the Native calendar ordinarily used by the obligor.

#### IV.—Adverse Possession and Prescription.

**23.** For the purpose of constituting an adverse possession by a person claiming title, land is deemed to have been possessed and occupied

- (1) where it has been usually cultivated or improved,
  - (2) where it has been protected by a substantial enclosure,
  - (3) where buildings have been erected upon it, or
  - (4) where it has been used for the supply of fuel, timber, minerals, wax, honey, lac, juice of trees and the like, or for the purposes of husbandry, or otherwise for the benefit of the occupant;
- and an hereditary office is deemed to have been possessed when the profits thereof have been usually received.

What constitutes ad-  
verse possession.

**24.** When the relation of landlord and tenant, principal and agent, or master and servant has existed between any persons, the possession of the tenant, agent, or servant is deemed the possession of the landlord, principal, or master until the expiration of twelve years from the termination by the landlord, principal, or master of the tenancy, agency or service. But such presumption cannot be made after the periods herein limited.

#### Prescription.

**25.** Adverse, uninterrupted possession for the period hereby limited in the case of any suit for the recovery of property confers a title thereto, which is sufficient against all:

#### V.—Miscellaneous.

**26.** Notwithstanding anything hereinbefore contained, no suit against a person to whom property has been conveyed in trust for specific purposes, and no suits against his representatives, for the purpose of following in his or their hands such property, shall be barred by any length of time.

**27.** No foreign rule of limitations shall be a defence to a suit in British Foreign limitation law. India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were living in such country when the extinction took place.

**28.** Suits in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

Suits on foreign con-  
tracts.

## FIRST SCHEDULE.

(See section 2.)

Number and year.	Subject or title.	Extent of repeal.
21 Jac. I, cap. sixteen	... An Act for limitation of actions and for avoiding of suits in law.	The whole Statute.
4 Ann, cap. sixteen	... An Act for the amendment of the law and the better advancement of justice.	Sections seventeen, eighteen and nineteen.
53 Geo. III, cap. one hundred and fifty-five.	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with certain exclusive privileges; for establishing further Regulations for the government of the said territories, and the better administration of justice within the same; and for regulating the trade to and from the places within the limits of the said Company.	Section one hundred and twenty-four, so far as it applies to British India.
6 & 7 Vic., cap. ninety-four	... Foreign Jurisdiction Act ...	Section seven, so far as it applies to British India.
Act No. XI of 1841	... Military Courts of Requests ...	The proviso in section nine.
Act No. XII of 1855	... An Act to enable Executors, Administrators or Representatives to sue and be sued for certain wrongs.	In section one, the words "and provided such action shall be brought within one year after the death of such person," and the words "and so as such action shall be commenced within two years after the committing of the wrong."
Act No. XIII of 1855	... An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.	In section two, the words "and that every such action shall be brought within twelve calendar months after the death of such deceased person."
Act No. XXV of 1857	... Forfeiture for mutiny ...	Section nine.
Act No. VIII of 1859	... The Code of Civil Procedure ...	In section one hundred and nineteen, the words "within a reasonable time not exceeding thirty days after any process for enforcing the judgment has been executed," and the words "within thirty days from the date of the judgment." In section two hundred and thirty, the words "within one month from the date of the dispossession." In section two hundred and thirty-one, the words "within one month from the date of

FIRST SCHEDULE—*continued.*

Number and year.	Subject or title.	Extent of repeal.
		the dispossession." The last twelve words of section two hundred and forty-six. In section two hundred and fifty-six, the words "at any time within thirty days from the date of the sale." In section two hundred and sixty-nine, the words "if made within one month from the date of such existence or obstruction, or of such dispossession as the case may be." In section three hundred and twenty-four, the second sentence. In section three hundred and twenty-seven, the words "within six months from the date of the award." In section three hundred and thirty-three, from and including the words "within the period" down to the end of the section. In section three hundred and forty-seven, the words "within thirty days from the date of the dismissal." In section three hundred and seventy-three, the words "within the period prescribed for the presentation of a memorandum of appeal." Section three hundred and seventy-seven.
Act No. IX of 1859	... Forfeited property ... ...	The proviso in section twenty.
Act No. XIV of 1859	... An Act to provide for the limitation of suits.	The whole Act, except so much of section fifteen as does not relate to the limitation of suits.
Act No. IX of 1860	... Workmen and employers ... ...	So much of section two as relates to the limitation of suits.
Act No. XXXI of 1860	... Arms Act ... ...	So much of section forty-nine as relates to the limitation of suits.
Act No. V of 1861	... Mofussil Police ... ...	So much of section forty-two as relates to the limitation of suits.
Act No. XXIII of 1861	... Civil Procedure Code Amendment ...	Section twelve.
Act No. I of 1863	... Civil Courts in British Burma ...	Section twenty-four.
Act No. VI of 1863	... Consolidated Customs Act ...	So much of section two hundred and fourteen as relates to the limitation of suits.
Act No. XXIII of 1863	... Claims to Waste-lands ...	So much of section five as relates to the limitation of suits.

FIRST SCHEDULE—*concluded.*

Number and year.	Subject or title.	Extent of repeal.
Act No. VII of 1865 .....	Government Forests Act .....	So much of section sixteen as relates to the limitation of suits.
Act No. XX of 1866 .....	Registration Act .....	Section fifty-one.
Act No. XIV of 1868 .....	Contagious Diseases Act .....	So much of section twenty-five as relates to the limitation of suits.
Act No. XX of 1869 .....	Volunteers .....	So much of section twenty-two as relates to the limitation of suits.
Act No. X of 1870 .....	Land Acquisition .....	So much of section fifty-eight as relates to the limitation of suits.
Bombay Regulation V of 1827...	A Regulation defining the Limitations, as to Time, within which Civil Actions may be prosecuted, and containing Rules of Judication respecting written Acknowledgments of Debts executed without receipt of a full consideration; also regarding Interest, the tendering payment of Debts, and the disposal of Property mortgaged or pledged.	Section one, clause one.

## SECOND SCHEDULE.

(See section 4.)

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part I.—Ten days.</i>	
1.—Application to set aside an award.	Ten days ..	When the award is submitted to the Court.
1A.—Complaint, under the Cattle-trespass Act, of an illegal seizure.	Ditto ..	The date of the seizure.
	<i>Part II.—Thirty days.</i>	
2.—Suit to contest an award of the Board of Revenue under Act No. XXIII of 1863 ( <i>to provide for the adjudication of claims to waste-lands</i> ).	Thirty days ...	The date of the award.
3.—Appeal under the Code of Civil Procedure to the Court of a District Judge.	Ditto ...	The date of the decree appealed against.
3A.—Appeal under the Code of Criminal Procedure to any Court other than the High Court.	Ditto ...	The date of the sentence or order appealed against.
4.—Application by a plaintiff for an order to set aside a judgment by default.	Ditto ...	The date of the judgment.
5.—Application by a defendant for an order to set aside a judgment <i>ex parte</i> .	Ditto ...	The date of executing any process for enforcing the judgment.

SECOND SCHEDULE—*continued.*

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part II.—Thirty days,—concluded.</i>	
6.—Application under the Code of Civil Procedure, section two hundred and thirty.	Thirty days ...	The date of the dispossession.
7.—Application to set aside a sale in execution of a decree, on the ground of irregularity in the publishing or conducting the sale.	Ditto ...	The date of the sale.
8.—Application complaining of resistance or obstruction to delivery of possession of immoveable property sold in execution of a decree, or of dispossession in the delivery of possession to the purchaser of such property.	Ditto ...	The date of the resistance, obstruction, or dispossession.
9.—Application for re-admission of an appeal dismissed for want of prosecution.	Ditto ...	The date of the dismissal.
	<i>Part III.—Sixty days.</i>	
9 A.—Appeal to the High Court under the Code of Criminal Procedure.	Sixty days ...	The date of the sentence or order appealed against.
	<i>Part IV.—Ninety days.</i>	
10.—Suit for an act done in pursuance of any enactment in force for the time being in British India.	Ninety days ...	When the act was done.
11.—Appeal to the High Court under the Code of Civil Procedure.	Ditto ...	The date of the decree appealed against.
12.—Application for leave to appeal as a pauper.	Ditto ...	Ditto.
13.—Application to a High Court for the admission of a special appeal.	Ditto ...	Ditto.
14.—Application for a review of judgment.	Ditto ...	The date of the decree.
	<i>Part V.—Six Months.</i>	
15.—Suit under Act No. XIV of 1859 ( <i>to provide for the limitation of suits</i> ), section fifteen, to recover possession of immoveable property.	Six months ...	When the dispossession occurs.
16.—Claim under Act No. IX of 1860 ( <i>to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers</i> ), section one.	Ditto ...	When the wages, hire, or price of work claimed accrued due.
17.—Suit under Act No. V of 1866 ( <i>to provide a summary procedure on bills of exchange, and to amend, in certain respects, the commercial law of British India.</i> )	Ditto ...	When the bill or promissory note becomes due and payable.
18.—Application under the Code of Civil Procedure, section three hundred and twenty-seven, that an award be filed in Court.	Ditto ...	The date of the award.

SECOND SCHEDULE—*continued.*

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part VI.—One Year.</i>	
19.—Suit upon a Statute, Act or Regulation for a penalty or forfeiture.	One year	... When the penalty or forfeiture is incurred.
20.—Suit for the wages of a domestic servant, artisan or labourer not provided for by No. 16.	Ditto	... When the wages sued for accrue due.
21.—Suit for the amount of a tavern-bill, or of a bill for board and lodging, or for lodging only.	Ditto	... When the bill is delivered.
22.—Suit to enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Ditto	... When the purchaser takes actual possession under the sale sought to be impeached.
23.—Suit for infringing copyright.	Ditto	... The date of the infringement.
24.—Suit for property seized under Act No. XXV of 1857 ( <i>to render officers and soldiers in the Native Army liable to forfeiture of property for mutiny</i> ), or for the restoration or recovery of such property, or its proceeds.	Ditto	... When the property is seized.
25.—Suit by executors, administrators, or representatives under Act No. XII of 1855 ( <i>to enable executors, administrators or representatives to sue and be sued for certain wrongs</i> ), or under Act No. XIII of 1855 ( <i>to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong</i> ).	Ditto	... The date of the death of the person wronged or killed.
26.—Suit for the recovery of the person of a wife.	Ditto	... When possession is demanded and refused.
27.—Suit for the restitution of conjugal rights.	Ditto	... When restitution is demanded and refused.
28.—Suit to set aside any of the following sales :—	Ditto	... The time that the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
(a) sale in execution of a decree of a Civil Court not established by Royal Charter;		
(b) sale in pursuance of a decree or order of a Collector or other officer of revenue;		
(c) sale for arrears of Government revenue or for any demand recoverable as such arrears;		
and (when the suit is brought by a patnídár or a person claiming under a patnídár) sale of a patní tálúq sold for current arrears of rent.		
<i>Explanation.</i> —In this clause 'patñ' includes any intermediate tenure saleable for current arrears of rent, and 'patnídár' includes the proprietor of such tenure.		

SECOND SCHEDULE—*continued.*

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part VI.—One year,</i> —concluded.	
29.—Suit to alter or set aside a summary decision or order of a civil court not established by Royal Charter.	One year ...	The date of the final decision or order in the case by a court competent to determine it finally.
30.—Suit by a person dispossessed under an execution-sale to have his rights declared and for recovery of possession.	Ditto ...	The date of the dispossession.
31.—Suit against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of Government revenue.	Ditto ...	When the attachment, lease or transfer is made.
32.—Suit against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Ditto ...	When the payment is made.
33.—Suit against Government for compensation for land acquired for public purposes, or for compensation when the acquisition is not completed.	Ditto ...	The date of determining the amount of the compensation, or the date of the refusal to complete.
33A.—Application for the execution of a decision (other than a decree or order passed in a regular suit or on appeal) of a Civil court not established by Royal Charter or of a Revenue court.	Ditto ...	The date of the decision or of taking some proceeding to enforce, or keep in force, the decision.
	<i>Part VII.—Two years.</i>	
34.—Suit for false imprisonment. D. B. 30.	Two years ...	When the imprisonment ends.
35.—Suit for any other injury to the person.	Ditto ...	When the injury is committed.
36.—Suit for a malicious prosecution ...	Ditto ...	When the plaintiff is acquitted.
37.—Suit for libel ...	Ditto ...	When the libel is published.
38.—Suit for slander ...	Ditto ...	When the words are spoken.
39.—Suit for trespass upon immoveable property.	Ditto ...	When the trespass takes place.
40.—Suit for obstructing a way or a water-course	Ditto ...	The date of the obstruction.
41.—Suit for diverting a water-course ...	Ditto ...	The date of the diversion.
42.—Suit for taking or damaging moveable property.	Ditto ...	When the taking or damage occurs.
43.—Suit for wrongfully detaining title-deeds.	Ditto ...	When the title to the property comprised in the deeds is adjudged to the plaintiff.

SECOND SCHEDULE—*continued.*

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part VII.—Two years,—concluded.</i>	
44.—Suit for wrongfully detaining any other moveable property.	Two years ...	When the detainer's property becomes unlawful.
45.—Suit for specific recovery of moveable property.	Ditto ...	When the property is demanded.
46.—Suit for lost moveable property which the possessor refuses to restore.	Ditto ...	The date of the refusal.
47.—Suit for slander of title to property.	Ditto ...	When damage is caused by the slander.
48.—Suit for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto ...	When the loss occurs.
49.—Suit for inducing a person to break a contract with the plaintiff.	Ditto ...	The date of the breach.
50.—Suit for an illegal, irregular, or excessive distress.	Ditto ...	The date of the distress.
51.—Suit for wrongful seizure of moveable property under legal process.	Ditto ...	The date of the seizure.
52.—Suit against a carrier for losing or injuring goods.	Ditto ...	When the loss or injury occurs.
53.—Suit against a carrier for delay in delivering goods.	Ditto ...	When the goods ought to be delivered.
54.—Suit against one who, having a right to use property for specific purposes, perverts it to other purposes.	Ditto ...	The time of the perversion.
55.—Suit under Act No. XII of 1855 ( <i>to enable executors, administrators or representatives to sue and be sued for certain wrongs</i> ) against an executor, administrator or other representative.	Ditto ...	When the wrong complained of is committed.
56.—Suit for compensation for any wrong, malfeasance, nonfeasance or misfeasance independent of contract and not herein specially provided for.	Ditto ...	When the default happens.
	<i>Part VIII.—Three years.</i>	
57.—Suit to contest an award under any of the following Regulations of the Bengal Code:—	Three years ...	The date of the final award or order in the case.
VII of 1822, IX of 1825, and IX of 1833.		
58.—Suit to recover any property comprised in such award.	Ditto ...	Ditto.

SECOND SCHEDULE—*continued.*

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part VIII.—Three years,—continued.</i>	
59.—Suit by any person bound by an order respecting the possession of property made under Act No. XVI of 1838, section one, clause two, or Act No. XXV of 1861, chapter twenty-two, or by any one claiming under such person, to recover the property comprised in such order.	Three years ...	The date of the final order in the case.
60.—Suit for the hire of animals, vehicles, boats or household furniture.	Ditto ...	The date of the hiring.
61.—Suit for the balance of money advanced in payment of goods to be delivered.	Ditto ...	When the goods ought to be delivered.
62.—Suit for the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto ...	The date of the delivery of the goods.
63.—Suit for the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto ...	The expiry of the period of credit.
64.—Suit for the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto ...	When the period of the proposed bill elapses.
65.—Suit for the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Ditto ...	The date of the sale.
66.—Suit for the price of work done by the plaintiff for the defendant at his request.	Ditto ...	When the work is done.
67.—Suit for money payable for money lent or for money lent under an agreement that it shall be payable on demand.	Ditto ...	When the loan is made.
68.—Suit for money payable to the plaintiff for money paid for the defendant.	Ditto ...	When the money is paid.
69.—Suit for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Ditto ..	When the money is received.
70.—Suit for money payable for interest upon money due from the defendant to the plaintiff where there is no registered agreement in writing to pay the interest.	Ditto ...	When the interest becomes due.
71.—Suit for money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto ...	When the accounts are stated, unless where the debt is made payable at a future time and then when that time arrives.
72.—Suit upon a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto ...	At the time specified or upon the contingency happening.

SECOND SCHEDULE—*continued.*

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part VIII.—Three years,—continued.</i>	
73.—Suit upon a judgment not obtained in British India.	Three years ...	The date of the judgment.
74.—Suit against a factor for an account.	Ditto ...	When the account is demanded.
75.—Suit on a bill of exchange or promissory note payable at a fixed time after date.	Ditto ...	When the bill or note falls due.
76.—Suit on a bill of exchange payable at or after sight.	Ditto ...	When the bill is presented.
77.—Suit on a bill of exchange accepted payable at a particular place.	Ditto ...	When the bill is presented at that place.
78.—Suit on a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto ...	When the fixed time expires.
79.—Suit on a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Ditto ...	The date of making or accepting.
80.—Suit by the endorsee of a promissory note against the endorser.	Ditto ...	The date of the endorsement.
81.—Suit on a promissory note or bond payable by instalments.	Ditto ...	The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.
82.—Suit on a promissory note or bond payable by instalments, which provides that if default be made in payment of one instalment the whole shall be due.	Ditto ...	The time of the first default.
83.—Suit on a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto ...	The time of the delivery to the payee.
84.—Suit on a dishonoured foreign bill where protest has been made and notice given.	Ditto ...	When the notice is given.
85.—Suit by the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Ditto ...	The date of the refusal to accept.
86.—Like suit when the bill has been dishonoured by non-acceptance and afterwards by non-payment.	Ditto ...	Ditto.
87.—Suit by the acceptor of an accommodation-bill against the drawer.	Ditto ...	When the acceptor pays the amount.
88.—Suit by a surety against the principal debtor.	Ditto ...	When the surety first pays the creditor.

SECOND SCHEDULE—*continued.*

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part VIII.—Three years,—continued.</i>	
89.—Suit by a surety against a co-surety.	Three years ...	When the plaintiff first pays anything in excess of his own share.
90.—Suit upon any other contract to indemnify.	Ditto ...	When the plaintiff is actually damaged.
91.—Suit by an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto ...	The termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
92.—Suits for compensation for damages caused by an injunction wrongfully obtained.	Ditto ...	When the injunction ceases.
93.—Suit for the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Ditto ...	The time of the last item admitted or proved in the account.
94.—Suit on a policy of insurance when the sum assured is payable after proof of the death or loss has been given to or received by the insurers.	Ditto ...	When proof of the death or loss is given or received, to or by the insurers, whether by or from the plaintiff, or any other person.
95.—Suit by the assured to recover premia paid under a policy voidable at the election of the insurers.	Ditto ...	When the insurers elect to avoid the policy.
96.—Suit by a principal against his agent for moveable property received by the latter and not accounted for.	Ditto ...	When the account is demanded and refused.
97.—Other suits by principals against agents for neglect or misconduct.	Ditto ...	When the neglect or misconduct occurs.
98.—Suit to cancel or set aside an instrument not otherwise provided for.	Ditto ...	When the instrument is executed.
99.—Suit to declare the forgery of an instrument issued, or registered, or attempted to be enforced.	Ditto ...	The date of the issue, registration, or attempt.
100.—Suit for property which the plaintiff has conveyed while insane.	Ditto ...	When the plaintiff is restored to sanity and has knowledge of the conveyance.
101.—Suit for relief on the ground of fraud.	Ditto ...	When the fraud becomes known to the party wronged.
102.—Suit for relief on the ground of mistake in fact.	Ditto ...	When the mistake becomes known to the plaintiff.
103.—Suit for money paid upon an existing consideration, which afterwards fails.	Ditto ...	The date of the failure.
104.—Suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto ...	The date of the trustee's death.

SECOND SCHEDULE—*continued.*

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part VIII.—Three years,—continued.</i>	
105.—Suit for contribution by a party who has paid the whole amount due under a joint decree payable by rateable shares.	Three years ...	The date of the plaintiff's advance in excess of his own share.
106.—Suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Ditto ...	When the right to contribution accrues.
107.—Suit for a seaman's wages. ....	Ditto ...	The end of the voyage during which the wages are earned.
108.—Suit by a Muhammadan for exigible dower ( <i>mu'ajjal</i> ).	Ditto ...	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
109.—Suit by a Muhammadan for deferred dower ( <i>muwajjal</i> ).	Ditto ...	When the marriage is dissolved by death or divorce.
110.—Suit by a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto ...	The date of the satisfaction of the mortgage.
111.—Suit for an account and a share of the profits of a dissolved partnership.	Ditto ...	The date of the dissolution.
112.—Suit by a Hindú manager of a joint estate for contribution in respect of a payment made by him on account of the estate.	Ditto ...	The date of the payment.
113.—Suit to set aside a decree obtained by fraud.	Ditto ...	The date of the decree.
114.—Suit by a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto ...	When the trees are cut down.
115.—Suit for the profits of land belonging to the plaintiff wrongfully received by the defendant.	Ditto ...	When the profits are received.
116.—Suit for arrears of rent, <i>málikáná</i> and <i>toda garás</i> .	Ditto ...	When the arrears become due.
117.—Suit by a vendor of land to enforce his lien for unpaid purchase-money.	Ditto ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
118.—Suit for specific performance of a contract.	Ditto ...	When the plaintiff has notice that his right is denied.
119.—Suit for the rescission of a contract...	Ditto ...	When the contract is executed by the plaintiff.

SECOND SCHEDULE—*continued.*

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part VIII.—Three years,—concluded.</i>	
120.—Suit for the breach of any contract, express or implied, not in writing registered.	Three years ...	When the contract is broken, or (where there are successive breaches) when the breach sued for occurs, or (where the breach is continuing) when it ceases.
121.—Application for the execution of a decree or order of a court not established by Royal Charter.	Ditto ...	The date of the decree or order, or (when the application next hereinafter mentioned has been made) the date of applying in good faith to the court to enforce, or keep in force, the decree or order, or (when the notice next hereinafter mentioned has been issued) the date of issuing in good faith a notice under the Code of Civil Procedure, section two hundred and sixteen, or (where there has been an appeal) the date of the final decree or order of the Appellate Court, or (where there has been a review of judgment) the date of the decision passed on the review.
122.—Application for the execution of any such decree or order within the local limits of the ordinary original civil jurisdiction of a court established by Royal Charter.	Ditto ...	The date of filing in such Court the copy of the decree or order.
	<i>Part IX.—Six years.</i>	
123.—Suit on a promise or contract in writing registered.	Six years ...	When the right to sue accrues. <i>Explanation.</i> —In the case of a suit of any of the descriptions mentioned in Part VI or Part VIII of this schedule, the right to sue shall be deemed to accrue at the time fixed by the third column for such description of suit.
124.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto ...	Ditto.
	<i>Part X.—Twelve years.</i>	
125.—Suit by an auction purchaser or any one claiming under him to avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, the estate being, by virtue of such sale, freed from incumbrances and under-tenures.	Twelve years ...	When the sale becomes final and conclusive.
126.—Suit to avoid incumbrances or under-tenures in a <i>patni taluk</i> or other saleable tenure sold for arrears of rent, the taluk or tenure being, by virtue of such sale, freed from incumbrances and under-tenures.	Ditto ...	When the sale becomes final and conclusive.
127.—Suit upon a judgment obtained in British India, or a recognizance.	Ditto ...	The date of the judgment or recognizance.

SECOND SCHEDULE—*continued.*

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part X.—Twelve years,—continued.</i>	
128.—Suit in a case governed by English law for the breach of a contract by specialty.	Twelve years ...	When the contract is broken.
129.—Suit for a legacy.	Ditto ...	When the legacy becomes payable or deliverable.
130.—Suit for an hereditary office.	Ditto ...	When the defendant, or some person through whom he claims, took adverse possession of the office.
131.—Suit by a landlord to recover possession from a tenant.	Ditto ...	When the tenancy is determined.
132.—Suit in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Ditto ...	When the mortgagee is first entitled to possession.
133.—Suit by a purchaser at a private sale for possession of the immoveable property sold, when the vendor was out of possession at the date of the sale.	Ditto ...	When the vendor is first entitled to possession.
134.—Like suit by a purchaser at a sale in execution of a decree, when the execution-debtor was out of possession at the date of the sale.	Ditto ...	When the execution-debtor is first entitled to possession.
135.—Suit by a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when he never has had possession.	Ditto ...	The date of the sale.
136.—Like suit when the purchaser had possession, but was afterwards dispossessed.	Ditto ...	The date of the dispossession.
137.—Suit by a mírásídár to recover possession of mírás land, which his ancestor had resigned to Government, from a holder to whom Government had subsequently granted it.	Ditto ...	When the land was resigned.
138.—Suit by a remainderman, a reversioner, or an executory devisee, for possession of immoveable property.	Ditto ...	When his estate falls into possession.
139.—Like suit by a Hindú entitled to the possession of immoveable property on the death of a Hindú widow.	Ditto ...	When the widow dies.
140.—Suit by a Hindú governed by the law of the Mitákshará to set aside his father's alienation of ancestral property.	Ditto ...	The date of the alienation.
141.—Like suit by a Hindú governed by the law of the Dáyabhágá.	Ditto ...	When the father dies.
142.—Suit during the life of a Hindú widow by a Hindú entitled to the possession of land on her death to have an alienation made by the widow declared to be void except for her life.	Ditto ...	When the alienation took place.

SECOND SCHEDULE—*continued.*

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part X.—Twelve years,—concluded.</i>	
143.—Like suit after the widow's death ...	Twelve years ...	The date of the death.
144.—Suit by a Hindú excluded from joint-family property to enforce a right to share therein.	Ditto ..	In the case of a Hindú governed by the law of the Dáyabhágá, the date of the death of the person from whom the property is alleged to have descended.
		In the case of any other Hindú, the date of the last payment to the plaintiff on account of the share by the person in possession or management of the property, not in any way on behalf of the plaintiff.
145.—Suit by a Hindú for maintenance.	Ditto ...	When the maintenance sued for is claimed and refused.
146.—Suit to set aside an adoption ...	Ditto ...	The date of the adoption.
147.—Suit for the resumption or assessment of rent-free land.	Ditto ...	When the right to resume or assess the land first accrued :
		Provided that no such suit shall be maintained where the land forms part of a permanently-settled estate, and has been held rent-free from the time of the Permanent Settlement.
148.—Suit to establish a periodically recurring right.	Ditto ..	When the plaintiff is first denied the enjoyment of the right.
149.—Suit for money charged upon or payable out of immoveable property.	Ditto ..	When the money becomes due.
150.—Suit for immoveable property or any interest therein not hereby otherwise specially provided for.	Ditto ...	When the defendant, or some person through whom he claims, took adverse possession of the property.
151.—Application to enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction.	Ditto ...	When a present right to enforce the judgment, decree or order accrued to some person capable of releasing the right :
		Provided that, when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be.

SECOND SCHEDULE—*concluded.*

Description of suit.	Period of limitation.	Time when period begins to run.
	<i>Part XI.—Thirty years.</i>	
152.—Suit against a depositary or pawnee to recover moveable property deposited or pawned.	Thirty years ...	The date of the deposit or pawn, unless where an acknowledgment of the title of the depositor or pawnor, or of his right of redemption, has been made in writing signed by the depositary, or pawnee, or some person claiming under him, and, in such case, the date of the acknowledgment.
153.—Suit to recover moveable property conveyed in trust, deposited or pawned and afterwards bought from the trustee, depositary or pawnee in good faith and for value.	Ditto ...	The date of the purchase.
	<i>Part XII.—Sixty years.</i>	
154.—Suit against a mortgagee to recover immoveable property mortgaged.	Sixty years ...	The date of the mortgage, unless where an acknowledgment of the title of the mortgagor or of his right of redemption has been made in writing signed by the mortgagee or some person claiming under him, and, in such case, the date of the acknowledgment.
155.—Suit to recover immoveable property conveyed in trust or mortgaged and afterwards purchased from the trustee or mortgagee in good faith and for value.	Ditto ...	The date of the purchase.
156.—Suit before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Ditto ...	When any part of the principal or interest was last paid on account of the mortgage debt.
157.—Any suit in the name of the Secretary of State for India in Council.	Ditto ..	When the right to sue accrued.

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*Nothing hereinafter contained shall be deemed to have the force of law.*

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## STATEMENT OF OBJECTS AND REASONS.

Though the Limitation Act (XIV of 1859) has not been in force for eight years, its twenty-four sections have given rise to more than a thousand reported cases, of which many are inconsistent and some directly conflicting. The time therefore appears to have arrived for attempting to redraw and re-arrange the Act so as to render the law on so important a subject certain, simple and easily ascertainable.

The present Bill is arranged on the following principle. In determining whether a given suit is barred by limitation, three matters, and three only, need, as a rule, be considered. These are, first, the class to which the suit belongs; secondly, the period of limitation prescribed therefor, and, thirdly, the time when that period begins to run. Most of the difficulties which arise in applying the Limitation Act are caused by the third of these considerations. The framers of the Act, it is true, have in some cases expressly fixed the time at which the period of limitation shall be taken to commence. But as to suits for wages, hire, the price of goods sold by retail, and damages for several kinds of wrong, and as to the other innumerable suits for which no period is specially provided, they have contented themselves with declaring that the period runs "from the time the cause of action arose." To say when a cause of action arises is sometimes difficult, and the great feature of the present measure is its attempt to preclude this difficulty. The bulk of the Bill accordingly consists of a schedule of the commonest suits, shewing, in the case of each, (1) the period of limitation applicable thereto, and (2) the time when that period begins to run. Easy access to the contents of this schedule is given by a copious alphabetical index.

The Bill also repeals and re-enacts the limitation-rules as to suits under Acts in force throughout British India, as well as the provisions contained in the Code of Civil Procedure as to the time within which appeals and certain applications to Courts must be presented and made. The Bill provides (Schedule II, No. 121) for applications for the execution of decrees of mofussil Courts within the local limits of the ordinary original civil jurisdiction of the High Courts. This will supply an omission in the law which has lately been pointed out by the High Court of Madras (5 Mad. H. C. Rep. 219).

The other provisions of the Bill will now be noticed.

Act XIV of 1859, section 1, declares that "no suit shall be maintained unless the same is instituted within the period of limitation hereinafter made applicable to a suit of that nature." Upon this section many questions have arisen; as to the effect of pleading limitation; whether the plea can be considered on appeal where it has not been set up in the Court of first instance, and whether there is, in this respect, any distinction between regular and special appeals. The corresponding provision of the Bill (section 4) is, it is hoped, so framed as to preclude such questions.

The explanation to section 4 of the Bill enacts (in accordance with decisions of the High Court at Fort William) that a suit shall be considered as instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application to sue as such is filed, and in the case of a claim against a Company which is being wound up by the Court, when the claimant applies to the official liquidator.

Section 5 provides for the case where a period of limitation expires when the Court is closed, empowers the Court, in proper cases, to admit an appeal or an application for review after the period applicable thereto, and declares, in accordance with a decision of Sir B. Peacock's, that an appeal once admitted shall not be dismissed as late.

The section (7) on legal disability, in accordance with the original draft of Act XIV, omits the case of coverture. The identity of interests between husband and wife, even where the Indian Succession Act does not apply, will suffice to secure attention to her claims against third parties. The section provides for the case of two disabilities existing when the right to sue accrues.

Sections 8 and 9 embody the English law as to the effect of the disability of a joint creditor or claimant, and as to the continuous running of time.

In computing the period of limitation, contradictory rulings have been made as to whether the day on which the cause of action arose should be excluded. The Bill, section 10, settles this question in the affirmative.

Section 11—as to the effect of a defendant's absence from British India—is equivalent to Act XIV of 1859, section 13. But the words 'for any suit' have been introduced so as to preclude (in accordance with a decision of the Madras High Court) the application of this provision to the execution of decrees.

To section 12—as to the effect of suing *bond fide* in a wrong court—have been added explanations to shew, (1) that, in excluding the time during which a former suit was pending, the day on which that suit was instituted and the day on which the proceedings therein ended, shall both be counted, and (2) that a plaintiff resisting an appeal presented on the ground of

want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of the section. These provisions accord with the rulings in *Hurro Soonduree Dabea v. Kally Mohun* and in *Shumboonath Biswas v. Kistodhone Sircar* cited in the second edition of Mr. Thomson's work on Act XIV, pp. 288, 292.

No provision is made in Act XIV for a case where the commencement of a suit is stayed by injunction. Section 13 of the Bill provides (in accordance with the New York Code of Civil Procedure, section 589) that, in such case, the time that the injunction continues is no part of the period limited for the institution of the suit.

Section 14 declares, in accordance with the decision in *Gopal Chunder Ghose v. Raj Chunder Dutt*, 2 W. R. Mis. 9, that, in computing the period prescribed for a suit for possession by an execution-purchaser, the time during which the judgment-debtor has been suing to set aside the sale shall be excluded.

Section 15, in accordance with English cases, declares that when a person who would, if alive, have a right to sue, dies before the accrual, time shall begin to run as soon as he is represented in interest. So, where a person against whom, if alive, a right to sue would have accrued, dies before the accrual, time will begin running when there is a representative whom the plaintiff may sue.

Section 16—as to the effect of fraud—is equivalent to Act XIV of 1859, section 9.

Section 17—as to the effect of an acknowledgment or promise in writing—settles, by the explanation and illustrations added thereto, several doubts which have arisen on the corresponding section (4) of Act XIV. It declares, in accord with the English case of *Edmonds v. Downes*, 2 C. & M. 459, 463, that where the acknowledgment is undated, oral evidence may be given of the time it was signed. But it also declares (herein contravening *Haydon v. Williams*, 7 Bing. 163) that when the acknowledgment is destroyed or lost, oral evidence of its contents shall not be received. It declares, in the ‘explanation,’ that an acknowledgment may be sufficient though it omits to specify the exact amount of the debt, or avers that the time for payment has not come, or sets up limitation as a bar, or is accompanied by a refusal to pay, or is coupled with a claim to a set-off, or, lastly, is addressed to any person other than the creditor.

Doubts have arisen as to how limitation should be applied when, after the institution of a suit, a new plaintiff or defendant is substituted or added. Section 18 contains rules on this subject, which accord with the decisions in 6 W. R. 298 and 10 W. R. 317.

Section 19 states the rules of English law as to the computation of time, (1) where there are successive breaches of contract, and (2) where a breach of contract or a nuisance is continuing.

Section 20 embodies the English law as to suits for compensation for a lawful act which, from subsequently causing damage, becomes unlawful.

When a decree directs payment to be made by instalments at specified dates, section 21 declares (in accordance with two decisions of the Bombay High Court) that, for the purpose of computing the time within which application may be made to enforce each instalment, the date when it becomes due shall be deemed the date of the decree.

Section 22 (also in accordance with a decision of the Bombay High Court) provides that in the absence of evidence to the contrary, an instrument made by a Native shall, for the purposes of the Limitation Act, be deemed to be made with reference to the calendar ordinarily employed by him.

Except in the Bombay Presidency (see Bombay Regulation V of 1827, section 1, clause 1) Indian statute-law contains no distinct enactment on the subject of the acquisition of title by prescription. Part IV of the Bill attempts to supply this want. It begins (section 23) by defining what constitutes adverse possession by a claimant of land or of an hereditary office. It then declares (section 24) how long the possession of a tenant, an agent or a servant shall be deemed the possession of his landlord, principal or master, and it concludes (section 25) by providing, in accordance with the New York Civil Code, section 441, and with 3 & 4 Wm. IV., c. 27, section 34, that adverse uninterrupted possession for the period limited in the case of any suit for the recovery of property confers a title thereto which is sufficient against all.

Part V of the Bill contains some miscellaneous provisions. Section 26 declares that suits against express trustees and their representatives, for the purpose of following trust-property, shall not be barred by any lapse of time. The section has been so framed as to preclude its application to cases of implied or constructive trust. Section 27 states the only case in which the Courts of this country can be required to give effect to a foreign rule of limitations. And section 28 declares that suits on contracts entered into abroad shall, here, be subject to the Indian limitation law, part of the *lex fori*. This is in accordance with *Huber v. Steiner*, 2 Scott 304.

To the Bill are appended two Schedules. The first comprises all the enactments relating to limitation and extending to British India which have not hitherto been expressly repealed. Of these, the first mentioned, 21 Jac., c. 16, was held in *The East India Co. v. Paul* (7 Moo. P. C. C. 85) to extend to India. Act XIV of 1859 is of course repealed, with the exception of one section (15) whose proper place is in the Code of Civil Procedure.

The second Schedule is divided into twelve parts corresponding with the twelve periods of limitation prescribed for the suits, appeals and applications to which the Act extends. Part IV provides a period of ninety days for all suits for acts done in pursuance of enactments in force in British India. Part VII provides a period of two years for suits for all wrongs independent of contract. Part VIII fixes a period of three years for suits on contracts not in writing registered. Where the contract is in writing and registered, the period will (under Part IX) be six years. So in the case of all suits for which no period of limitation is specially provided. Part XI and the first three clauses of Part XII state the law as laid down in Act XIV, section 1, clause 15, and sections 5 and 6. But as there is now nowhere in British India any special provision limiting public claims by Government, the last clause of Part XII proposes, in accordance with Bengal Regulation II of 1805, section 2, to fix a period of sixty years for suits in the name of the Secretary of State in Council.

It is right, in conclusion, to acknowledge the great assistance derived, in framing this Bill, from Mr. Ninian Thomson's work on Act XIV of 1859.

SIMLA,  
The 20th September 1870. }

J. F. STEPHEN.

\* WHITLEY STOKES,  
Secy. to the Govt. of India.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd December 1870, and was referred to a Select Committee with instructions to make their report thereon in six weeks:—

No. 28 OF 1870.

*A Bill for the Registration of Criminal Tribes and Eunuchs.*

WHEREAS it is expedient to provide for the registration, surveillance and control of certain criminal tribes and eunuchs; It is hereby enacted as follows:—

*Part I.—Preliminary.*

1. This Act may be called "The Criminal Tribes' Act, 1870."

This section and section nine extend to the whole of British India: the rest of Local extent. this Act extends only to the territories respectively under the governments of the Lieutenant-Governors of the North-Western Provinces and the Panjâb and under the administration of the Chief Commissioner of Oudh.

Commencement.

This Act shall come into force on the passing thereof.

*Part II.—Criminal Tribes.*

2. The Local Government may declare any Power to declare cer- tribe, gang or class of per- tain tribes to be crimi- sons reasonably suspected of nal. being addicted to the commission of theft or robbery, and having a fixed place of residence during the whole or any part of the year, to be a criminal tribe, gang or class, and may direct the Magistrate of any District in

Register of members of such tribes. which such tribe, gang or class, or any part thereof, resides to make a register of the members of such tribe, gang or class in a form to be prescribed by the Local Government.

3. Upon receiving such direction, the said Magistrate shall publish a notice in the place where the register is to be made, calling upon all the members of the tribe, gang or class to appear, at a time and place therein specified, before such persons as he appoints, and to give those persons such information as may be necessary to enable them to make the register in the form aforesaid.

Any member of any such tribe, gang or class failing to appear according to appear, refusing or giving false information. penalties for failing to such notice, or intentionally omitting to furnish such information, or furnishing, as true, information on the subject which he knows or has reason to believe to be false, shall be deemed guilty of an offence under section one hundred and seventy-four, or one hundred and seventy-six, or one hundred and seventy-seven of the Indian Penal Code, as the case may be.

4. The register, when made, shall be kept by Charge of register. the officer in charge of such Police Station as the said Magistrate from time to time directs.

5. The officer keeping the register shall from time to time report to the Reporting desirable said Magistrate any alterations in register. alterations which ought to be made therein, either by way of addition or omission.

6. Any person deeming himself aggrieved by Complaints of entries in register. any entry made or proposed to be made in such register may complain to the said Magistrate, and the Magistrate shall retain such person's name on the register, or erase it therefrom, or enter it thereupon as he may see fit.

7. When the register has been formed, no alteration shall be made there- By whom alterations are to be made. in except by or by order of the said Magistrate, and he shall write his initials against every such altera-

**8. The Local Government may, with the previous consent of the Governor General in Council, make rules binding upon all persons whose names may, for the time being, be upon such register.**

Such rules may prescribe—

*1st*, the limits within which persons whose names are on the register shall reside;

*2nd*, conditions as to holding passes, under which such persons may be permitted to leave the said limits; and

*3rd*, conditions as to answering at roll-call or otherwise, in order to satisfy the said Magistrate, or persons authorized by him, that the persons whose names are on the register are actually present at given times within the said limits.

Any person violating any of the said rules shall, on conviction before a Magistrate, be punished with rigorous imprisonment for a term which may extend to six months, or with fine, or with whipping, or with all or any two of those punishments.

**9. Any person so registered, who is found in any part of India beyond his residence, without such pass as may be required by the said rules, may be arrested without warrant by any Police Officer, and taken before a Magistrate, who may order him to be removed to the District in which he ought to have resided, there to be dealt with according to the rules under this Act in force for the time being.**

The rules for the time being in force for the transmission of prisoners shall apply to all persons removed under this section.

### Part III.—Eunuchs.

**10. The Local Government shall cause the following registers to be made and kept up by such officer as from time to time it appoints in this behalf:**

(a) A register of the names and residences of all eunuchs residing in any town or place to which the Local Government specially extends this Part of this Act, who are reasonably suspected of kidnapping or castrating children, or of committing offences under the Indian Penal Code, section three hundred and seventy-seven, or of abetting, within the meaning of the same Code, the commission of any of the said offences; and

(b) a register of the property of such of the said eunuchs as, under the provisions hereinafter contained, are required to furnish information as to their property.

The Local Government may from time to time make rules for the making and keeping up such registers, and may, if it think fit, direct the name of any eunuch to be erased therefrom.

Penalty on registered eunuch appearing in female clothes;

**11. Any eunuch so registered who appears in female clothes in any public street or place,**

or who dances or plays music, or takes part in any public exhibition, in any or dancing in public or for hire. public street or place, or for hire in any private house,

shall, upon conviction before a Magistrate, be punished with imprisonment for a term which may extend to two years, or with fine, or with whipping, or with all or any two of those punishments.

**12. Any eunuch so registered who has in his charge, or keeps in his house**

Penalty on registered eunuch keeping boy under 16. or under his power or control, any boy who has not completed the age of sixteen years, shall, upon conviction before a Magistrate, be punished with imprisonment for a term which may extend to two years, or with whipping, or with both.

Disabilities of registered eunuchs. **13. No eunuch so registered shall be capable—**

- (a) of being or acting as guardian to any minor;
- (b) of making a gift;
- (c) of making a will, or
- (d) of adopting a son.

**14. Any officer authorized by the Local Government in this behalf may,**

Power to require information as to registered eunuchs' property. from time to time, require any eunuch so registered to furnish information as to all property, whether moveable or immoveable, of or to which he is possessed or entitled, or which is held in trust for him.

Any such eunuch intentionally omitting to furnish such information, or Penalty for refusing furnishing, as true, information on the subject which he knows or has reason to believe to be false, shall be deemed to have committed an offence under section one hundred and seventy-six or one hundred and seventy-seven of the Indian Penal Code, as the case may be.

### Part IV.—Miscellaneous.

**15. All sentences of whipping under this Act shall be executed in manner, Execution of sentences of whipping. and subject to the precautions, prescribed in sections ten and eleven of Act No. VI of 1864.**

**16. No suit or other proceeding shall be maintained against any person done *bond fide*. in respect of anything done by him in good faith pursuant to this Act.**

**17. All Magistrates and other persons are hereby indemnified for anything done under the circular order 18 of 1856 of Judicial Commissioner of the Panjab.** Commissioner of the Panjab, and no suit or other proceeding shall be maintained against any such Magistrate or other person in respect of anything so done.

### STATEMENT OF OBJECTS AND REASONS.

Various tribes in the North-Western Provinces, the Panjab and Oudh carry on theft and robbery systematically. They live quietly for part of the year in their own Districts, but they spend the rest of it in wandering about the country plundering, and on their return divide their gains according to a fixed rule. In the North-Western

Provinces alone, there are twenty-nine tribes who support themselves in the manner above described.

The first object of the present Bill is to provide for the formation of a register of the members of the tribes in question. They will be compelled, by Rules which the Local Government is empowered to make, to reside within certain fixed limits, forbidden to leave those limits without permission, and if found beyond them, apprehended by the Police and sent to the place where they ought to live. Like rules were till lately enforced, with excellent results, in the Panjab; but the Chief Court has recently decided that these rules were unauthorized by law.

The second object of the Bill is to crush an association of eunuchs in the North-Western Provinces, who carry on a system of unnatural prostitution, and perpetuate their class by kidnapping and castrating boys.

The Bill provides for the registration of the names, residences and property of all eunuchs reasonably suspected of committing these offences; imposes penalties on any registered eunuch who appears in public in female clothes, who dances in public or for hire, or who keeps in his control any boy under the age of sixteen. It also deprives such eunuchs of the power of becoming guardians to minors, of making gifts and wills, and of adopting sons.

J. F. STEPHEN.

*The 23rd November 1870.*

WHITLEY STOKES,

*Secy. to the Govt. of India.*

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd December 1870:—

No. 29 OF 1870.

*A Bill to repeal the law relating to the General Funds of the Courts of Small Causes at the Presidency Towns.*

WHEREAS by Act No. IX of 1850 (*for the more easy Recovery of small Debts and Demands in Calcutta, Madras and Bombay*), section nineteen, it was (amongst other things) enacted that the fees therein mentioned should be paid over to an account to be termed the General Fund of the Court; and whereas no such payment has ever been made and no such account has ever been opened; and whereas it is expedient that the said enactment should be expressly repealed so far as relates to such payment and account; It is hereby enacted as follows:—

1. The following words of the said section are hereby repealed (that is to say): “which fees shall be paid over to an account to be termed the General Fund of the Court.”

2. All officers and other persons are hereby indemnified for omitting to make such payment or to open or keep such account; and no suit or other proceeding shall be maintained against any such

officer or other person in respect of any such omission.

#### STATEMENT OF OBJECTS AND REASONS.

Act IX of 1850, section 19, provides that the fees received by each of the Courts of Small Causes at the Presidency Towns shall be paid over to a Fund termed the General Fund of the Court. This provision has remained a dead letter: the charges of the Courts have hitherto been defrayed by the State; and the fees in question have always been credited to the State as “Judicial Receipts” or “Law and Justice.” It is clearly desirable to render this practice legal and to continue to treat the receipts and charges of the Presidency Courts of Small Causes in the same manner as the receipts and charges of the other Courts in British India. The Bill accordingly repeals the provision above referred to and indemnifies all officers for omitting to obey it.

R. TEMPLE.

*The 19th November 1870.*

WHITLEY STOKES,

*Secy. to the Govt. of India.*

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd December 1870:—

No. 30 OF 1870.

*A Bill to extend the Prisons' Act, 1870, to Coorg.*

For the purpose of extending the Prisons' Act 1870, to Coorg: It is hereby enacted as follows:—

1. The said Act shall extend to the territories under the administration of the Chief Commissioner of Coorg, but subject to the following modifications (that is to say):—

(a.) The preamble and sections one and six shall be construed as if, after the words ‘Central Provinces,’ the word ‘Coorg’ were inserted.

(b.) Section one shall be construed as if, for the words and figures ‘December, 1870,’ the words and figures ‘January, 1871’ were substituted.

#### STATEMENT OF OBJECTS AND REASONS.

No Jail Code having been laid down for guidance in Coorg, the present Bill, which has been framed at the suggestion of the Chief Commissioner, extends to that Province the recently passed Prisons' Act, No. XXVI of 1870.

F. S. CHAPMAN.

*The 18th November 1870.*

WHITLEY STOKES,

*Secy. to the Govt. of India.*

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd December 1870:—

No. 31 of 1870.

*A Bill to authorise the committal of European British subjects by Courts in the Andamans to the High Court at Fort William.*

WHEREAS Act No. XXI of 1863 (to constitute Recorders' Courts for the Towns of Akyab, Rangoon and Moulmein in British Burmah, and to establish Courts of Small Causes in the said towns), section forty-one, enacts that European British subjects arrested for, or guilty of, certain offences in the Tenasserim Provinces shall be committed to, and tried by, the Recorder at Maulmain; And whereas the Andaman Islands form part of the said Provinces; And whereas it is expedient that the jurisdiction so given to the Recorder at Maulmain should, so far as regards the said Islands, be transferred to the High Court of Judicature at Fort William; It is hereby enacted as follows:—

1. Every European British subject charged in the Andaman Islands with any offence (other than an offence punishable with death under the Indian Penal Code) which a Justice of the Peace is not competent to punish, shall, if there be

European British subject charged in the Andamans with certain offences to be committed to the High Court, Fort William. sufficient grounds for committing him for trial, be committed to, and tried by, the said High Court in the exercise of its ordinary original criminal jurisdiction.

2. Act No. XXI of 1863, section forty-one,

Act XXI of 1863, so far as it relates to the section 41, repealed as to the Andaman Islands, is hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

The Andaman Islands being attached to the Tenasserim Commissionership, under the Burma Recorders Courts' Act (XXI of 1863), section 41, European British subjects charged in those Islands with offences not punishable with death or by a Justice of the Peace, are committed to the Recorder at Maulmain.

As there are now no regular means of communication between the Andamans and British Burma, the present Bill has been prepared in order to transfer the jurisdiction thus conferred from the Recorder of Maulmain to the High Court at Fort William.

The Bill has been prepared at the suggestion of the Superintendent of Port Blair and the Nicobárs.

F. S. CHAPMAN.

The 19th November 1870.

WHITLEY STOKES,  
Secy. to the Govt. of India.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd December 1870, and was referred to a Select Committee with instructions to make their report thereon in six weeks:—

No. 32 of 1870.

*A Bill to authorise the extension of the Chaukidári Act to places where there is no Jamadár of Police.*

WHEREAS by Act No. XX of 1856 (to make better provision for the appointment and maintenance of Police chowkeydars in Cities, Towns, Stations, Suburbs and Bazaars in the Presidency of Fort William in Bengal), section two, the Local Government is restrained from extending that Act to any City, Town, Suburb or Bazaar unless there be therein (or in some other City, Town, Suburb or Bazaar with which the same may be united as hereinafter provided) a Police station under an officer of a grade not below that of a jamadár; And whereas it is expedient to remove such restriction; It is hereby enacted as follows:

1. In Act No. XX of 1856, section two, the

Repeal of part of following words are repealed section 2, Act No. XX (that is to say) "to any City, Town, Suburb or Bazaar, unless there be therein (or in some other City, Town, Suburb, or Bazaar with which the same may be united as hereinafter provided) a Police station under an officer of a grade not below that of jemadar, nor."

STATEMENT OF OBJECTS AND REASONS.

The Local Governments are expressly forbidden to extend the Chaukidári Act (XX of 1856) to any town in which there is not a Police station under an officer of a grade not below that of a jamadár. The recent reductions of the police have greatly diminished the number of stations at which there are jamadárs; and it is often desirable to extend the Act to towns where there are no Government constables, or where, at least, there is no jamadár.

The present Bill therefore proposes to repeal so much of section 2 of the Act as requires that police of a fixed strength must exist in the town before the provisions of the law can be extended thereto. The Bill has been prepared at the suggestion of the Government of the North-Western Provinces, and with the approval of the Governments of Bengal and the Panjáb.

F. S. CHAPMAN.

The 17th November 1870.

WHITLEY STOKES,  
Secy. to the Govt. of India.

Provinces alone, there are twenty-nine tribes who support themselves in the manner above described.

The first object of the present Bill is to provide for the formation of a register of the members of the tribes in question. They will be compelled, by Rules which the Local Government is empowered to make, to reside within certain fixed limits, forbidden to leave those limits without permission, and if found beyond them, apprehended by the Police and sent to the place where they ought to live. Like rules were till lately enforced, with excellent results, in the Panjab; but the Chief Court has recently decided that these rules were unauthorized by law.

The second object of the Bill is to crush an association of eunuchs in the North-Western Provinces, who carry on a system of unnatural prostitution, and perpetuate their class by kidnapping and castrating boys.

The Bill provides for the registration of the names, residences and property of all eunuchs reasonably suspected of committing these offences; imposes penalties on any registered eunuch who appears in public in female clothes, who dances in public or for hire, or who keeps in his control any boy under the age of sixteen. It also deprives such eunuchs of the power of becoming guardians to minors, of making gifts and wills, and of adopting sons.

J. F. STEPHEN.

*The 23rd November 1870.*

WHITLEY STOKES,

*Secy. to the Govt. of India.*

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd December 1870:—

No. 29 OF 1870.

*A Bill to repeal the law relating to the General Funds of the Courts of Small Causes at the Presidency Towns.*

WHEREAS by Act No. IX of 1850 (*for the more easy Recovery of small Debts and Demands in Calcutta, Madras and Bombay*), section nineteen, it was (amongst other things) enacted that the fees therein mentioned should be paid over to an account to be termed the General Fund of the Court; and whereas no such payment has ever been made and no such account has ever been opened; and whereas it is expedient that the said enactment should be expressly repealed so far as relates to such payment and account; It is hereby enacted as follows:—

1. The following words of the said section are hereby repealed (that is to say): “which fees shall be paid over to an account to be termed the General Fund of the Court.”

2. All officers and other persons are hereby indemnified for omitting to make such payment or to open or keep such account; and no suit or other proceeding shall be maintained against any such

officer or other person in respect of any such omission.

#### STATEMENT OF OBJECTS AND REASONS.

Act IX of 1850, section 19, provides that the fees received by each of the Courts of Small Causes at the Presidency Towns shall be paid over to a Fund termed the General Fund of the Court. This provision has remained a dead letter: the charges of the Courts have hitherto been defrayed by the State; and the fees in question have always been credited to the State as “Judicial Receipts” or “Law and Justice.” It is clearly desirable to render this practice legal and to continue to treat the receipts and charges of the Presidency Courts of Small Causes in the same manner as the receipts and charges of the other Courts in British India. The Bill accordingly repeals the provision above referred to and indemnifies all officers for omitting to obey it.

R. TEMPLE.

*The 19th November 1870.*

WHITLEY STOKES,

*Secy. to the Govt. of India.*

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd December 1870:—

No. 30 OF 1870.

*A Bill to extend the Prisons' Act, 1870, to Coorg.*

FOR the purpose of extending the Prisons' Act 1870, to Coorg: It is hereby enacted as follows:—

1. The said Act shall extend to the territories under the administration of the Chief Commissioner of Coorg, but subject to the following modifications (that is to say):—

(a.) The preamble and sections one and six shall be construed as if, after the words ‘Central Provinces,’ the word ‘Coorg’ were inserted.

(b.) Section one shall be construed as if, for the words and figures ‘December, 1870,’ the words and figures ‘January, 1871’ were substituted.

#### STATEMENT OF OBJECTS AND REASONS.

No Jail Code having been laid down for guidance in Coorg, the present Bill, which has been framed at the suggestion of the Chief Commissioner, extends to that Province the recently passed Prisons' Act, No. XXVI of 1870.

F. S. CHAPMAN.

*The 18th November 1870.*

WHITLEY STOKES,

*Secy. to the Govt. of India.*

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd December 1870 :—

No. 31 of 1870.

*A Bill to authorise the committal of European British subjects by Courts in the Andamans to the High Court at Fort William.*

WHEREAS Act No. XXI of 1863 (*to constitute Recorders' Courts for the Towns of Akyab, Rangoon and Moulmein in British Burma, and to establish Courts of Small Causes in the said towns*), section forty-one, enacts that European British subjects arrested for, or guilty of, certain offences in the Tenasserim Provinces shall be committed to, and tried by, the Recorder at Maulmain; And whereas the Andaman Islands form part of the said Provinces; And whereas it is expedient that the jurisdiction so given to the Recorder at Maulmain should, so far as regards the said Islands, be transferred to the High Court of Judicature at Fort William; It is hereby enacted as follows :—

1. Every European British subject charged in the Andaman Islands with any offence (other than an offence punishable with death under the Indian Penal Code) which a Justice of the Peace is not competent to punish, shall, if there be

European British subject charged in the Andamans with certain offences to be committed to the High Court, Fort William.

sufficient grounds for committing him for trial, be committed to, and tried by, the said High Court in the exercise of its ordinary original criminal jurisdiction.

2. Act No. XXI of 1863, section forty-one, so far as it relates to the section 41, repealed as to Andaman Islands, is hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

The Andaman Islands being attached to the Tenasserim Commissionership, under the Burma Recorders Courts' Act (XXI of 1863), section 41, European British subjects charged in those Islands with offences not punishable with death or by a Justice of the Peace, are committed to the Recorder at Maulmain.

As there are now no regular means of communication between the Andamans and British Burma, the present Bill has been prepared in order to transfer the jurisdiction thus conferred from the Recorder of Maulmain to the High Court at Fort William.

The Bill has been prepared at the suggestion of the Superintendent of Port Blair and the Nicobârs.

F. S. CHAPMAN.

The 19th November 1870.

WHITLEY STOKES,  
Secy. to the Govt. of India.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd December 1870, and was referred to a Select Committee with instructions to make their report thereon in six weeks :—

No. 32 of 1870.

*A Bill to authorise the extension of the Chaukidâr Act to places where there is no Jamâdâr of Police.*

WHEREAS by Act No. XX of 1856 (*to make better provision for the appointment and maintenance of Police chowkeydars in Cities, Towns, Stations, Suburbs and Bazaars in the Presidency of Fort William in Bengal*), section two, the Local Government is restrained from extending that Act to any City, Town, Suburb or Bazaar unless there be therein (or in some other City, Town, Suburb or Bazaar with which the same may be united as hereinafter provided) a Police station under an officer of a grade not below that of a jamadâr; And whereas it is expedient to remove such restriction; It is hereby enacted as follows :

1. In Act No. XX of 1856, section two, the Repeal of part of following words are repealed section 2, Act No. XX (that is to say) "to any of 1856. City, Town, Suburb or Bazaar, unless there be therein (or in some other City, Town, Suburb, or Bazaar with which the same may be united as hereinafter provided) a Police station under an officer of a grade not below that of jemadar, nor."

STATEMENT OF OBJECTS AND REASONS.

The Local Governments are expressly forbidden to extend the Chaukidâr Act (XX of 1856) to any town in which there is not a Police station under an officer of a grade not below that of a jamadâr. The recent reductions of the police have greatly diminished the number of stations at which there are jamadârs; and it is often desirable to extend the Act to towns where there are no Government constables, or where, at least, there is no jamadâr.

The present Bill therefore proposes to repeal so much of section 2 of the Act as requires that police of a fixed strength must exist in the town before the provisions of the law can be extended thereto. The Bill has been prepared at the suggestion of the Government of the North-Western Provinces, and with the approval of the Governments of Bengal and the Panjâb.

F. S. CHAPMAN.

The 17th November 1870.

WHITLEY STOKES,  
Secy. to the Govt. of India.

*Printed and Published for the GOVT. OF INDIA, at the Office of SUPDT. GOVT. PRINTING, 8, Hastings Street, Calcutta.*



# The Gazette of

Published by Authority.

CALCUTTA, SATURDAY, DECEMBER 1.

Separate paging is given to this Part in order that it may be filed as a separate volume.

## PART V.

Bills introduced into the Council of the Governor General for the purpose of making Laws and Regulations, or published under Rule 19.

GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

THE following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd December 1870, and was referred to a Select Committee with instructions to make their report thereon in two months :—

No. 27 of 1870.

### THE INDIAN LIMITATION BILL, 1871.

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### A BILL FOR THE LIMITATION OF SUITS.

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; It is hereby enacted as follows:—

'registered' means duly registered under the law for the registration of assurances in force at the time and place of executing the instrument referred to in the context;

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

#### *II.—Limitation of Suits.*

- 4. Subject to the provisions contained in

Dismissal of suits instituted after period of (inclusive), every suit instituted, appeal presented, and

application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

*Explanation.*—A suit is instituted in ordinary cases when the plaint is presented to the proper officer: in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

#### 5. Provided—

- (a) that if the period of limitation prescribed for any suit, appeal or application where court is closed when period expires, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens:

Proviso as to appeals of judgment may be admitted after the period of limitation prescribed therefor,

*I.—Preliminary.*  
1. This Act may be called 'The Indian Limitation Act, 1871.'

Local extent. It extends to the whole of British India;

Commencement. And it shall come into force on the first day of March 1871:

But nothing herein contained applies to suits in which the right to sue accrued before that day, or to applications to execute decrees or orders then in force.

2. The enactments mentioned in the first schedule hereto annexed are repealed to the extent specified in the third column of the same schedule.

3. In this Act, unless there be something repugnant in the subject or interpretation-clause, context—

'plaintiff' includes any person through whom a plaintiff claims:

'bill of exchange' includes a hundí:

'trustee' does not include a benámidár, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title: